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of

# INTERNATIONAL CONFERENCE ON BILLS OF EXCHANGE

MESSAGE FROM THE  
PRESIDENT OF THE UNITED STATES  
TRANSMITTING A LETTER FROM THE  
SECRETARY OF STATE INCLOSING A  
REPORT OF THE DELEGATE TO THE  
INTERNATIONAL CONFERENCE ON  
BILLS OF EXCHANGE, HELD AT THE  
HAGUE, JUNE 23 TO JULY 25, 1910



JANUARY 20, 1911.—Read, referred to the Committee on Foreign  
Relations, and ordered to be printed

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## LETTER OF TRANSMITTAL.

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*To the Senate and House of Representatives:*

I transmit herewith a letter from the Secretary of State, inclosing a report, with accompanying papers, of the delegate of the United States to the International Conference on Bills of Exchange, held at The Hague from June 23 to July 25, 1910.

WM. H. TAFT.

THE WHITE HOUSE, *January 20, 1911.*



## LETTER OF SUBMITTAL.

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The PRESIDENT:

Referring to the provision in the diplomatic and consular act, approved March 2, 1909, for participation by the United States in an international congress to be held at The Hague for the purpose of promoting uniform legislation regarding letters of exchange (Stat. L., vol. 35, p. 680), the undersigned, the Secretary of State, has the honor to lay before the President, with a view to its transmission to Congress, the report, with accompanying papers, of the delegate of the United States to the conference, which was in session at The Hague from June 23 to July 25, 1910.

Respectfully submitted.

P. C. KNOX.

DEPARTMENT OF STATE,  
*Washington, January 17, 1911.*



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## REPORT OF THE AMERICAN DELEGATE TO THE INTERNATIONAL CONFERENCE ON BILLS OF EXCHANGE.

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34 NASSAU STREET,  
*New York, January 3, 1911.*

SIR: I have the honor to report that, in compliance with your instructions of May 4, 1910, I attended as delegate of the United States, the International Conference on Bills of Exchange, the sessions of which began at The Hague on June 23, 1910. By way of summing up the results of the conference, before entering upon an examination of its proceedings in detail, I will state that the conference adopted, for consideration by the powers taking part, a complete draft of a proposed international convention and a draft of a proposed uniform law on bills of exchange. The delegates of Great Britain and the delegate of the United States were not able to agree to the advisability of adopting the uniform law in their respective countries, and explained the reasons fully on two different occasions in the plenary sessions of the conference. I signed the protocol with a reservation referring to the reasons for nonconcurrence, which had been thus set forth in plenary session. ✓

Obviously it does not follow, from the inability of Great Britain and the United States to approve the convention and draft of a law in full, that they are without interest in the form and requirements of the uniform law and its possible adoption by other states. In spite of the attitude of reserve taken by the American delegate, the three points upon which the greatest emphasis was laid in the American memorandum submitted to the conference were embodied in the proposed uniform law. These were:

I. That the form and manner of protest of a dishonored bill of exchange shall conform to the law of the country where payment of the bill is provided for and where dishonor occurs.

II. That protest of a bill of exchange for nonacceptance or for nonpayment shall constitute a valid protest when made on the first day after dishonor, and shall be binding upon all parties who would be bound by protest on any other day.

III. That when a bill is presented for acceptance, the drawee shall have the right to reserve his decision upon acceptance until the following day, but may accept on the day of presentment.

It is a consideration of high importance for this country, moreover, that if the proposed uniform law were universally adopted, except by Great Britain and America, the systems of commercial law with which international bankers would have to deal would be reduced substantially to two in place of the many systems with which they now have to deal. Thus the desirable objects of uniformity, certainty, and facility in knowing the law would be greatly promoted.

The reasons why Great Britain and the United States were unable to concur without reservations in the protocol of the conference will

be discussed at length further on in this report. It is sufficient to say at this point that they did not arise from lack of sympathy with the objects of the conference, but from certain fundamental differences between Anglo-Saxon and continental law and from the fact that comparative uniformity of law has been brought about during the past thirty years in Great Britain and her dependencies and in various States of the American Union by long and arduous efforts, which would be largely nullified, with the result of renewed confusion, if it were attempted to substitute a complete new code for the laws which have been thus secured.

#### NARRATIVE OF PROCEEDINGS.

Having thus summed up broadly the results of the conference, I will enter more in detail into its proceedings and the relations of the proposed uniform law to the statutes of the American States.

As stated by the president of the conference, at its first session on June 23d, the initiative in holding such a conference under official sanction came from the Governments of Germany and Italy. In consequence of their suggestions to the Government of The Netherlands, inquiries were made by the latter Government in the autumn of 1908 as to the willingness of the powers to assist at such a conference. Owing to some delay in the responses, the original purpose of holding the conference in September, 1909, was altered to provide for meeting in June, 1910.

On the 15th of January, 1909, the minister of the Netherlands at Washington, by order of his Government, submitted to the Department of State a set of questions drawn up by the State committee on international private law at The Hague, intended to form a basis for the labors of the conference, answers to which questions on the part of the United States were requested. A similar set of questions was transmitted to the other States which accepted the invitation to participate in the conference. Copies of these questions in the French original and in an English translation, prepared under the direction of the American delegate, appear in the appendix to this report. In compliance with the suggestion of the Government of Her Majesty the Queen of the Netherlands, that replies to these questions were desired not later than the close of February, 1910, I had the honor to transmit to the Department on March 12 a report, dealing with these questions, which is also printed as an appendix to this report. As stated in this memorandum, I held a number of general meetings, to which were invited leading bankers dealing in foreign exchange, the counsel of the American Bankers' Association, representatives of the Commissioners on Uniform State Laws, leading import and export houses, and others.

Copies of the Questionnaire were sent to about 100 persons in leading banking and shipping centers, likely to be interested in the subject of the conference, and replies were received discussing the merits of the questions presented. Representatives of leading foreign exchange houses attended the meetings—which were held by courtesy of the Chamber of Commerce of the State of New York in its rooms—and aided me greatly in ascertaining the attitude of American bankers upon the questions presented by the Questionnaire.

While the conference was the first held under diplomatic auspices for the purpose of dealing with bills of exchange, it was far from being the first conference which has considered the subject. Several previous gatherings, representing bodies of economic students and legal associations, had dealt with the matter and had in a measure paved the way for the formal official gathering which is the subject of this report. References to other gatherings where the subject came under discussion will be found in the opening address of Mr. Asser at the recent conference, in the preface to the work of Sir Mackenzie Chalmers on Bills of Exchange, and in a monograph by Prof. Felix Meyer, extracts from which appear in the appendixes to this report.

The conference at The Hague opened with about 60 delegates in attendance, representing 39 countries. The list of these powers (which will be found with the names of their delegates in the reports of the sittings and in the protocol) included practically every European country, several countries of Latin America, and China, Japan, and Siam. The first meeting was opened by the Minister of Foreign Affairs, formerly minister of the Netherlands at Washington. Mr. Asser, a member of the Permanent Court of Arbitration, who had been largely instrumental in perfecting the plans for the meeting, was made president by acclamation. Mr. Asser had been president of a series of conferences on international private law, and is one of the most eminent authorities on the subject in Europe.

Four sittings of the conference were devoted to discussion in plenary session of the contents of the Questionnaire, which had been submitted in advance to the powers. This discussion was general in character, being designed simply to permit a comparison of views, without any attempt to reach decisions or to take votes. It was evident from the beginning that practically all the countries represented, except the United States and Great Britain, were bent upon completing the draft of a uniform law of bills of exchange, complete in itself except so far as it impinged upon local practices which could not be disturbed without radical changes in other branches of local law. The delegations of Germany and Hungary each submitted a complete code on bills of exchange and the delegation of Belgium submitted a proposed law governing the check. These drafts were not formally considered by the conference, but provisions taken from them were discussed in the meetings of the sections and of the central committee.

At the close of the general discussion the delegates were divided into five sections, each section containing the delegations of five or six countries. In each of these sections it was proposed to discuss the entire subject matter of the Questionnaire, except certain portions which were referred to a special committee on private international law. The American delegate was made a member of the fifth section, containing also the delegations of Belgium, Spain, Sweden, Turkey, and Paraguay. In the discussions in this section the American delegate took part from time to time where matters arose affecting the interests of American bankers and shippers, but maintained an attitude of greater reserve than he would have done if he had deemed it advisable to sign the final protocol without reservations and to recommend its conclusions to the American Government for adoption by the several States.

After reports had been prepared by each section, the subject matter of the Questionnaire was taken up in a central committee, which consisted of the chairman and rapporteur of each section, with certain additions from the ranks of foreign ministers at The Hague and of bankers who were delegates to the conference.

The work of the central committee was in a sense the most important part of the work of the conference, since it brought to a head the conclusions reached by the majority of the representatives of the powers in the various sections. The deliberations of the central committee resulted in the formulation of a set of resolutions which embodied in substance the objects of the proposed uniform law and in the preparation of a report discussing the reasons for the adoption of each article. The report of this committee to the conference was prepared by M. Lyon-Caen, one of the most eminent of French authorities on commercial law, and by Herr Simons, one of the German delegates.

The report of these gentlemen on behalf of the central committee, with the resolutions adopted by the committee, were discussed in plenary session, but not in such detail as in the central committee. With minor changes, the report of the committee was adopted and was referred to a new committee to be put in final form. The latter committee was made up by adding to the committee of five on international private law the two rapporteurs of the central committee and M. Carlin, the minister of Switzerland, assistant rapporteur of the central committee. It was this committee of eight which drafted the report on international private law and the final protocol of the conference.

Of especial interest is the report of M. Renault, the rapporteur of this committee, because it sets forth with clearness and precision the motives which gave to the protocol its final form. The various methods which might be employed for seeking substantial uniformity in the laws of different nations on the subject of bills of exchange are taken up in turn and all are dismissed as falling short of the most conclusive and effective method except that of an international convention having the force of a treaty and embodying the precise text of the law to be enacted. Only by this method, it is argued by M. Renault, can the dangers be averted of undesirable modifications of the law to meet local prejudices in the first instance or hasty and ill-considered alterations from time to time.

The protocol presented, therefore, sums up the work of the conference by presenting the draft of a proposed convention, to which the powers are invited to become signatories, and the draft of the uniform law which is recommended for their consideration. It is not proposed by the protocol, however, that either the draft of the convention or the draft of the uniform law shall be at once adopted by any of the powers. Further action in the matter is provided for in the two recommendations which appear at the close of the protocol, to the effect that the Government of the Netherlands shall, after the delay necessary for examination in the various countries of the advance drafts of the two projects, convoke a new conference, which shall be authorized to determine the final text of the convention and of the law and to approve them by the signatures of plenipotentiaries in such a manner as to give them the binding force of treaty obligations.



A supplementary recommendation provides that the next proposed conference shall deliberate upon the unification of the law in regard to cheques.

It will thus be seen that the action taken at the recent conference was entirely of a recommendatory character and did not commit the representatives of any of the powers to do more than refer the drafts of the convention and of the uniform law to their respective governments for examination. There was apparently a desire in some quarters early in the conference to recommend the law directly to the powers for adoption; but the necessity of subjecting its provisions to more deliberate scrutiny than was possible in a convention of five weeks, and the desire that the final draft should be adopted by those powers accepting it with the minimum number of modifications, led to the decision to submit the projects before the conference *ad referendum* and to provide for final consideration at a future conference. ✓

#### ATTITUDE OF THE UNITED STATES AND GREAT BRITAIN.

It was the purely recommendatory character of the final protocol which permitted the delegate of the United States to affix his signature. This was done, however, only under reservations which, as already stated, were set forth at length in two statements in plenary sessions of the conference—one soon after its opening, and the other near its close—both of which were printed in full in the proceedings of the conference and appear in the appendix to this report. One of the motives for adopting the recommendatory form was, according to statements made outside the official proceedings of the conference, to secure the adhesion of the United States and Great Britain. It was well understood at this stage of the conference that such adhesion would only be given under the reservations which had been set forth by the two delegations, but it was apparently felt by the majority that even such an adhesion *ad referendum* would have a more favorable influence in promoting the objects of the conference than the refusal of the American and British delegations to sign.

At no stage of the conference was there any resentment against the attitude of the two Anglo-Saxon powers, because the statements submitted by their representatives made clear to the representatives of other powers, on the one hand, the obstacles of a legal and technical nature which precluded the substitution of a complete new code for existing British and American laws, and, on the other hand, the amount of effort which had already been expended in securing comparative uniformity among the English-speaking peoples.

On the part of both of the Anglo-Saxon powers the differences in the character of their fundamental law would make agreement difficult under any circumstances upon a law absolutely uniform with that of the continental powers. Apart from other differences, the influence of adherence to a code adopted many years ago in some of the continental countries and the English system of development of the law by judicial decision is important. The effects of this influence are thus set forth by Sir Mackenzie Chalmers in the introduction to the third edition of his work on Bills of Exchange:

The English theory may be called the "banking or currency" theory, as opposed to the French or mercantile theory. A bill of exchange in its origin was an instrument by which a trade debt, due in one place, was transferred in another. It merely

avoided the necessity of transmitting cash from place to place. This theory the French law steadily keeps in view. In England bills have developed into a perfectly flexible paper currency. In France a bill represents a trade transaction; in England, it is merely an instrument of credit. English law gives full play to the system of accommodation paper; French law endeavors to stamp it out. A comparison of some of the main points of divergence between English and French law will show how the two theories are worked out. In England it is no longer necessary to express on a bill that value has been given, for the law raises a presumption to that effect. In France the nature of the value must be expressed, and a false statement of value avoids the bill in the hands of all parties with notice. In England a bill may now be drawn and payable in the same place (formerly it was otherwise; see the definition of bill in Comyns' Digest). In France the place where a bill is drawn must be so far distant from the place where it is payable, that there may be a possible rate of exchange between the two. A false statement of places, so as to evade this rule, avoids the bill in the hands of a holder with notice. As French lawyers put it, a bill of exchange necessarily presupposes a contract of exchange. In England, since 1765, a bill may be drawn payable to bearer, though formerly it was otherwise. In France it must be payable to order; if it were not so, it is clear that the rule requiring the consideration to be expressed would be an absurdity. In England a bill originally payable to order becomes payable to bearer when indorsed in blank. In France an indorsement in blank merely operates as a procuration. An indorsement, to operate as a negotiation, must be an indorsement to order, and must state the consideration; in short, it must conform to the conditions of an original draft.

In the uniform law, as will appear hereafter, several of these distinctions have been removed in favor of the English system; but these changes in the status of a bill of exchange on the Continent are not carried far enough, even if generally adopted, to permit the Anglo-Saxon States to accept in exchange the more rigid rules in other respects which would continue to form a part of the Continental system.

On the part of the United States, as stated by their delegate in the conference, there were several additional reasons why it would be difficult, if not impossible, for the Federal Government to enter into a convention for a uniform law. Under the existing interpretation of the Constitution, Congress has not assumed the right to legislate in regard to bills of exchange; and it was hardly competent for the delegate of the United States to suggest that such a power would be assumed in future in view of existing policy and judicial decisions.

As pointed out by the American delegate in his final statement of July 21, Great Britain and the American States had already taken the initiative in seeking to bring about a uniform law many years before the invitations were issued to the recent conference. The bills of exchange act of Great Britain was enacted in that country in 1882, having been drafted, under instructions from the Institute of Bankers and the Associated Chambers of Commerce, by Sir Mackenzie Chalmers, who was himself one of the most eminent delegates to the recent conference. So successful was the English act in codifying the law and removing doubts and difficulties that it has been adopted in Canada, Australia, and many smaller countries under British jurisdiction, and became the model of an effort made in the United States to introduce a similar law in all the states. In 1895 the Conference of Commissioners on Uniformity of Laws, which met that year in Detroit, instructed the Committee on Commercial Law to have prepared a codification of the law relating to bills and notes. The matter was referred to a subcommittee, consisting of Lyman D. Brewster, of Connecticut; Henry C. Wilcox, of New York; and Frank Bergen, of New Jersey. John J. Crawford, of New York, was employed by them to draw the proposed law. When completed, it was submitted to



experts for criticism and, with various amendments, was adopted by the Conference of Commissioners on Uniformity of Laws which met at Saratoga in August, 1896.

From this draft, supported by the efforts of the commissioners on uniformity of laws in the various States, by the American Bankers' Association, and by other bodies, has resulted the enactment of the law known in America as the negotiable instruments law in 36 States and 2 other jurisdictions under American authority. The States in which the law is in force are Alabama, Arizona, Colorado, Connecticut, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

The other American jurisdictions in which the law is in force are the District of Columbia and the Hawaiian Islands.

The law was not enacted in some of these States without some modifications, but these modifications were so trivial as not to affect the general principle of the uniformity of the law of negotiable instruments.

These facts are recited here, and were brought to the attention of the conference, in order to show the long and arduous labor which had been performed in America to bring about uniformity and the difficulties which would be experienced in revoking what had been done in order to substitute a new law. Upon this point the declaration made, on behalf of the American Government, at the third plenary session of the conference, was as follows:

Obviously, in view of these considerations, the delegate of the United States would assume a weighty responsibility, and one difficult to carry into execution in effective form within a reasonable time, if he should join in a recommendation to establish a new code for negotiable instruments as a substitute for existing laws, or if he should recommend important and radical changes in the practice which has grown up under these laws.

From the standpoint of American bankers and merchants and of the Government of the United States, the adoption of such a policy would involve long continued confusion during the period required to substitute the new code for that which it has already required 13 years to enact in 36 States and Territories and would involve in addition the difficulties of interpretation by the courts which always arise in the application of a new measure, departing radically from the language and effect of previous laws and judicial decisions.

#### ANALYSIS OF THE UNIFORM LAW.

In considering the character of the proposed uniform law, it should be borne in mind that there are many points in which Anglo-Saxon and continental law are already alike in their operation and effects. So universal has become the use of the bill of exchange in international trade, and so substantially similar are the requirements for a sound and negotiable bill, that bills issued in all parts of the world already circulate freely in the financial centers and give rise to but few inconveniences. Indeed it might probably be said that more than 99 per cent of the bills entering into international commerce are paid at maturity and therefore raise no doubtful questions of legal interpretation or of the rights of intermediate parties between the

drawer and the ultimate payee. It is with the few cases where payment is not promptly made that the law has to concern itself chiefly, in order to make certain that every bill which is drawn shall so conform to the law and that every step taken in regard to it shall so conform to legal requirements that there can be no loss or material delay to the holder resulting from failure to comply with the law. Even where doubt as to payment is not involved, however, some questions of form arise which could be simplified by a rule of uniformity.

It will not be attempted here to enter upon a complete analysis of the uniform law submitted by the conference to the consideration of the States taking part. This would be to a large extent merely to traverse the admirable and clear exposition of its provisions made by the Rapporteurs, which appears in the appendix to this report. An analysis from the point of view of English law is made in the report of the British delegation and a parallel presentation of the paragraphs of the proposed uniform law with the corresponding provisions of the British law has been made by Sir Mackenzie Chalmers. Both of these documents and the analysis of the uniform law made by the delegation of France appear also in the appendix to this report. It will only be sought here to refer to certain general characteristics of the proposed uniform law and to discuss several particulars in which it differs from the existing law of America and Great Britain and raises issues affecting bills drawn between those countries and other countries.

✓ It is obvious at the outset, that the reduction of the foreign laws to a single body of law and the putting of that body of law into a code, would be a long step toward simplifying the inquiries required to be made by American and English bankers and shippers in dealing with bills likely to become the subjects of international circulation. At present there is no complete collection of foreign laws on bills of exchange, and the number of attorneys whose knowledge extends much beyond their national laws is not large. Some cases arising under foreign law are cited in text-books on British and American law. The French Government, moreover, has issued translations of several of the foreign laws, but they have not been collected and classified.

In comparing the proposed uniform law with the existing laws of America and Great Britain, the provisions of the uniform law fall naturally into three classes—those which are substantially the same in their operation; those which are supplementary, without obviously departing from American and English laws; and those which differ from those laws. Apparently any step which increases the number of provisions falling under the first class will be of mutual advantage to all countries concerned. Of the supplementary provisions, some may be recognized as of considerable value, and others as involving an effort to regulate too minutely matters which may better be left to private agreement. Among those provisions which differ in the two types of law, there are some which it might be of advantage to adopt from the proposed law into American and English law; there are others which could not be adopted without impairing existing rights and imposing an unnecessary degree of formalism upon financial and commercial transactions.

Under the first class of cases—where the uniform law coincides in substance with American and English law—are several in which the more liberal provisions of the American and English laws are substituted in the uniform law for antiquated and restrictive provisions now in force on the Continent of Europe. Among these may be cited the provision (Law, art. 11) that the mere signature of an indorser on the back of a bill of exchange, without date or qualifying words, constitutes a valid indorsement transferring the property in the bill. This would abolish the existing rule in France, by which such a signature constitutes only a guaranty of the previous signature. This change, which had the cordial approval of the French delegation to the conference, is one of many which tend to simplify the law in the spirit of the English and American law and would make its adoption on the Continent of Europe of advantage to American bankers and merchants.

The essential particulars which constitute a document a valid bill of exchange are substantially the same as laid down in the uniform law as in America and Great Britain, except in one point, to be presently referred to. The uniform law goes much farther in permitting defects in a bill (art. 2) without rendering it invalid than many continental laws have hitherto done.

The most notable difference of opinion in regard to the form of the bill of exchange was over the question whether it should be required to bear a specific designation as a bill of exchange in the national language of the country in which it was issued. The subject is involved in the continental countries to some extent with fiscal questions, which make it necessary to distinguish the bill from the check in order to collect the proper stamp tax. With this branch of the subject American legislation is little concerned.

It was generally recognized at the conference that failure to pay stamp taxes should not invalidate rights, as has sometimes been provided, in order to insure the payment of the tax. To this end a provision is incorporated in the proposed convention (Con., art. 16), that the contracting States shall not subordinate rights arising under a bill of exchange to the stamp laws, but shall at most only suspend such rights pending the payment of the taxes. In so far as this modifies more severe requirements of existing law, it will obviously be for the benefit of American bankers and shippers.

The solution reached by the conference, in the draft of the uniform law, in regard to the designation of a document as a bill of exchange, was that such designation should be required (Law, art. 1), unless the State availed itself of the privilege granted by article 2 of the convention, to require only that a bill should be made payable to order. By the provisions for conflict of laws, however, a State where the designation is not required is bound to refuse legal recognition within its territory of bills without the designation which have originated in countries by whose legislation it is required.

In the matter of provisions which are merely supplementary to existing English and American law, there are several included in the uniform law which appear unobjectionable upon their face, and perhaps might be embodied in American law without modifying its scope and without detriment to existing freedom of contract. Among such provisions are those which define more precisely the manner of interpreting expressions as to dates, including dates

based upon foreign calendars, like those of Russia and Greece (Law, art. 46).

Among the provisions which do not depart from existing methods, but which American and English practice have been content heretofore to leave to private agreement, is the matter of duplicates and copies. The delivery of several drafts of a bill is made mandatory upon the drawer when requested by the holder (Law, art. 74), and the method of dealing with copies is fully set forth (Law, art. 77). It was insisted by Mr. Fischel, the eminent banker who was a member of the German delegation, that it was highly important to have the giving of several drafts of a bill made mandatory when requested, because otherwise an importer beyond seas, dependent upon bills for his means of remittance, would be at the mercy of the vendor. While it was pointed out by the English delegate in the central committee that the number of drafts was a subject of free contract in England, it was contended that if the same drawer had been accustomed to give several drafts or copies the courts would probably decide that the practice had grown from a custom into an obligation toward the payee.

Among the cases where there is direct conflict between the uniform law and the laws of the Anglo-Saxon countries, there are several where the provisions of the uniform law or of existing continental laws are harmonious and consistent with themselves, and which therefore do not permit of the modification of one point without the modification of others. An interesting case of this sort is the manner in which the delay of presentment of a bill for payment, the doctrine of *vis major*, and the remedies allowed in case of failure to protest, are involved with each other. The American law requires presentment upon the day of maturity, subject to the usual provisions for holidays. No latitude is given to the holder of a bill as to the time in which he may present it after the date of maturity. The proposed uniform law, on the other hand, following in this respect the law of some of the continental countries, permits presentment on either of the two business days which follow the date of maturity (Law, art. 47).<sup>1</sup> The serious objection to this from the American point of view is that a holder delaying presentment in this manner might find the position of the acceptor materially changed within the three days. He might have been able to pay on the date of maturity and have been declared a bankrupt two days later. The indorsers and the drawer would thus become the victims of the delay (or the authorized negligence, so to speak) of the holder.

When the foreign laws and the uniform law are examined with respect to other provisions, however, the reasons for this latitude in presentment for payment are disclosed. The existing law of Germany admits no sufficient excuse for delay in presentment within the legal time except events of a public nature. The uniform law, following out this theory in substance, recognizes only "an insurmountable obstacle to the presentment of the bill or the drawing of the protest" as an excuse for delay. Such an obstacle must arise, moreover, in the place where presentment or the drawing of the protest should take place. Obstacles which deter the holder from presentment, like sudden illness, arrest by the police, or a railway accident, are not recognized as excuses. The English law, on the other hand, recognizes excuses of this

<sup>1</sup>This is subject to the qualification by the convention, that presentment may be required by national law on the day of maturity, but failure to observe this requirement shall permit only a suit for damages (Con. art. 7).



sort, when proved, as having the same character and giving the same rights as those arising from public causes, as an earthquake or a siege. Hence the greater liberality of the continental law in the time allowed for presentment.

So wide were the differences of opinion on this subject in the conference that it was not attempted to reduce them to a uniform rule. The latitude of three days given for presentment is embodied in the draft of the uniform law, but a special article of the convention (Con., art. 12) authorizes each state to decide that in case of negligence, there may exist within its territory an action against the drawer who has been unjustly enriched, that is, who has, through loss or negligence of the holder of a bill, acquired property or money without parting with anything in return.

It is obvious that, whatever may be the merits of the English or the continental theory upon these questions of time for presentment, *vis major*, and the effects of negligence, the policy of one system could not be adopted into the other in a single particular without readjustment in other particulars.

Almost inevitably linked with the questions of delay in presentment and of *vis major* is this one of fundamental importance to the holder of a bill who may, through neglect or otherwise, fail to comply promptly with legal requirements. In this respect it would seem that the English and American law, in spite of their liberality as to excuses, might take a leaf from the broader policy of some of the continental laws. Under English and American law it has become a principle so well established that it is no longer disputed that if due notice of dishonor of a bill is not given, and there is absence of adequate excuse, the holder loses both his right of recourse on the bill and his right of action on the consideration for the bill. Under the proposed uniform law this severe rule is mitigated. The difference in effect between the present English and American rule and that of the uniform law is thus summed up by the English technical delegates to the conference, in their communication to the British Foreign Office:

To give an illustration: Suppose Brown buys a motor car from Jones for £300 and gives him in payment a bill drawn on Smith, payable one month after date. Smith dishonors the bill, and Jones by some slip gives notice of dishonor to Brown a day too late. Under English law Brown is discharged from his liability on the bill, and can keep the motor car without paying for it. Under the uniform law Brown would be liable either on the bill or in an action for the price, but if he had suffered any loss through getting the notice of dishonor late he could sue Jones for damages. It seems to us that the English law is too severe, while the continental law is too lax. Jones ought to lose his right of recourse on the bill, but Brown ought to be liable to be sued for the price of the motor car, less any damage he may have suffered through getting notice of dishonor too late.

Long as the English and American rule has prevailed it would seem to be only a matter of equity that it should be modified in the sense proposed by the uniform law.

#### FUTURE ATTITUDE OF THE UNITED STATES.

Under the conditions which have been set forth—the adoption by the conference of a plan for a uniform law and the draft of a convention for putting such a law in operation—the question becomes of importance whether the Government of the United States shall

participate in the further conference to be held next year. Obviously, in view of the relations of American and British law to the subject, the Government of the United States would not desire, even if it had the authority, to become a party to a convention which would give the proposed uniform law plenary force in American States. It is not necessary, however, that the American attitude should be a simple non possumus.

There is hardly any matter which could more fittingly be made a subject of international agreement than the bill of exchange. It is an instrument which is described by Sir Mackenzie Chalmers as "the most cosmopolitan of all contracts." Long ago Justice Story also, in his judgment in *Swift v. Tyson* (16 Peters, 1), declared that "the law respecting negotiable instruments may be truly declared, in the language of Cicero, adopted by Lord Mansfield in *Luke v. Lyde*, to be in a great measure not the law of a single country only, but of the whole commercial world." Obviously, if the legislation of Great Britain and America could be made to conform, even in part, to that of other countries in respect to a matter of such cosmopolitan character as bills of exchange, involving practically no questions of political, territorial, or racial jealousy, great benefits would result in their commercial and financial relations with other countries.

One of the reasons why it would be desirable that the United States should be represented at a future conference is the fact suggested by Sir George Buchanan, the British minister at The Hague, that the laws already in force in Great Britain and America represent the commercial law, and a comparatively uniform law, for 120,000,000 people, not including the great population of British India. It is probably an indisputable fact, also, that this population represents a still larger proportion of the commercial transactions of the world. The magnitude of these transactions by American and British bankers and merchants extends their interest in the subject, moreover, far beyond the confines of their own territory. They are interested almost as much in simple, equitable, and workable rules in regard to bills of exchange in continental Europe, in South America, and in the Orient as are the local bankers and merchants of those parts of the world.

An American delegation to a future conference would be able, in the first place, to ascertain intimately the motives which governed the conference in the adoption of certain provisions of the uniform law. It would be able to go further, by pointing out weaknesses and dangers, if any were found, in the proposals made, and thus perhaps avert serious injury to American financial and commercial interests.

There are several points in the draft of the uniform law which has been proposed which involve less security to some of the parties to a bill than is afforded by American law. These provisions, in the main, are not provisions which are entirely novel, but are found in the existing laws of some continental countries. If they have not attracted the special attention of American bankers, it is because they involve points which arise but rarely and affect only a small percentage of the great mass of bills flowing through the channels of international finance.

As an illustration of such a provision, without undertaking to present all of them, may be named the provisions limiting the time for the presentment of bills, both for acceptance and for payment. It

is provided by the proposed uniform law (Law, art. 23) that a bill payable at a certain time after sight must be presented for acceptance within six months of its date, without prolongation of this time because of distance. While an extension of the time is permitted by express stipulation of the drawer, the limit of such extension is fixed at six months, thus limiting the entire period allowed between the date of the bill and presentment for acceptance to one year. By article 41 of the proposed law substantially the same provisions are applied to the presentment for payment of a bill payable at sight.

The principle of the English and American law, sustained by a long line of decisions, is that such matters may properly be left to free contract between the parties or to determination by the courts as to what constitutes "a reasonable time." From the difference in the law, the important difference results in practice that so long as the bill is not presented, the parties are held, under the provisions of the English and American law, in accordance with their original signatures. The effect of the proposed uniform law (Law, art. 64) is that the holder would be deprived after six months of his rights against the indorsers, against the drawer, and against all other parties liable except the acceptor and his guarantor. While there is something to be said in favor of having the time for presentment fixed by law, as was the case even in some American States before the general adoption of the negotiable instruments law, instead of being left entirely to the discretion of the courts, it seems clear that six months is too short a period for holding the parties in the case of bills drawn on remote points, where an error of transmission might easily deprive the lawful holder of opportunity to exercise his rights within so limited a time.

In the matter of prescription also narrow limits of time are imposed by the uniform law upon the rights of parties. As fixed by article 82 of the law, all actions against the acceptor and his guarantor must be begun within three years from the date of maturity. This period in itself, while three years less than the statute of limitations which governs such cases in England and America, is not so objectionable as other provisions of the same section. One of these is that the claims of the holder against indorsers, against the drawer, and against their guarantors are barred after six months from maturity or from the date of the protest, if that has been drawn within the time required by law. Actions of recourse also of one indorser against others and against the drawer are restricted to six months from the date on which the indorser took up the bill.

It goes without saying that provisions of this sort would, if generally adopted, have a high importance for American bankers and merchants, especially those doing business in the Orient and in other parts of the world which are remote and inaccessible. It is a matter of common knowledge that misunderstandings sometimes arise which, if hasty action is not taken, may be capable of adjustment, where, under the proposed rule, prompt protest, without adjustment, would be required in order to safeguard the rights of parties. The curtailment of the limitations for suits of indorsers against each other is even more strict than the general rule laid down by the Budapest Conference (rule 26), that "the limitation of actions upon bills of exchange against all parties shall be 18 months from the date of the maturity of the bill." Even this limitation was considered too restric-



tive by American bankers, for the reasons set forth in the memorandum submitted by the American delegate in response to the original "Questionnaire" of the Government of the Netherlands. The provisions of the uniform law on this subject are contrary to the existing laws of Great Britain and France as well as of America, and it is possible that a strong protest against them at the conference of next autumn would secure their modification.

In spite of several provisions of this character, which obviously call for careful scrutiny, long steps were taken by the recent conference toward the comparative liberality and respect for the intent of the contracting parties which have characterized for many years the American and English laws on bills. The spirit of many of the delegates was well illustrated by Mr. Lyon-Caen, at the first plenary sitting at which details were discussed, in the declaration that the Anglo-Saxon system had every preference in France if she were to modify her legislation. The French banking institutions consulted, he declared, pronounced for the most liberal system, which was that of Great Britain. The elaborate project submitted by the delegation of Hungary also, while adopting some regulations unfamiliar to English and American law, made many concessions toward the liberal spirit in which the eminent French delegate urged that the conference should act.

Hence, although the British delegation were distinctly instructed by their government that, as a general rule, they should "not hold out any hope that English rules of law are likely to be substantially modified and brought into conformity with continental rules," the two technical delegates strongly recommended, in their final report of August 16, that Great Britain should take part in the next conference and support certain points where, in their opinion, the English law was "distinctly more convenient than the foreign rule." Upon this subject they said:

As regards these points, if English mercantile opinion is in accordance with our views, we trust that there will be an opportunity to bring out views before the final conference which will meet about a year hence to shape the draft uniform law into its final and complete form. Although England can not join in the uniform law, it is important for us that that law should not contain provisions which are inimical to international commerce.

In view of the fact that the draft of the uniform law is to be subjected to further examination and amendment at the conference of next autumn before it is put in its final form, it does not seem advisable at this time to recommend any changes which might be desirable in American laws in order to bring them into a greater degree of conformity with the uniform law on those points where conformity would not be inimical to American interests and legal practice. Copies of the translation of the proposed uniform law have been sent to leading bankers, exporters, and others interested, with the suggestion that they single out the most important provisions which they consider desirable on the one hand or especially objectionable on the other. With the data obtained from the replies to these inquiries it will be possible for the American delegation, if the country is represented at the next conference, to concentrate its efforts upon such changes as are most desirable and after the conference to recommend to the American States, through the Department of State, those amendments or additions to American law which may be

made to advantage. It might tend to additional confusion to attempt to introduce such changes before the meeting of the conference of next autumn, except perhaps upon points where it appears to be clear that the provisions of the uniform law as it now stands will receive final approval. The British technical delegates have suggested that certain amendments in the English law "may be made at once, as desirable in themselves, without waiting for the adoption by other nations of the uniform law." The changes which they recommend are as follows:

1. That days of grace should be abolished.
2. That when a bill falls due on a nonbusiness day it should be payable on the next succeeding business day.
3. That when the sum payable by a bill is expressed more than once in words, or more than once in figures, and there is a discrepancy, the lesser sum shall be the sum payable.
4. That when a bill is expressed to be payable with interest and no rate of interest is specified, interest at the rate of 5 per cent shall be understood.
5. That where the acceptance consists of the simple signature of the drawee it must be on the face of the bill.
6. That where a bill is dishonored by nonacceptance, a party who is liable on the bill may nevertheless accept it for honor.
7. That payment for honor by the acceptor of a bill shall be prohibited.
8. That where the holder of a bill loses his right of recourse on the bill by reason of his failure duly to present or protest it or to give notice of dishonor, he shall not thereby lose his right of action on the consideration, but that if the drawer or indorser whom he sues has been prejudiced by that failure, such drawer or indorser shall be discharged from his liability on the consideration to the extent of any loss he may have suffered.

While most of these changes are such as are not likely to cause controversy, the method of securing legislation in the United States on these subjects is so complicated that it would probably not be advisable for the department to make any recommendations on the matter to the governments of the 46 States until after the conference of next autumn. If it then appears that the list of desirable recommendations can be extended and that similar modifications are likely to be introduced into the laws of Great Britain and her dependencies, thereby insuring an approach to uniformity throughout the English-speaking world, it may be advisable to refer to the States and to the legal bodies interested in the uniformity of commercial law the entire list of changes upon which agreement seems to be attainable and desirable.

#### THE PROPOSED CONFERENCE ON CHECKS.

An important reason why it may be desirable for the United States to be represented at the conference of next year is the adoption, at the close of the recent conference, of a resolution in regard to checks. This resolution declares that a later conference shall be charged with consideration of the unification of the law relative to the check, and to this end the Government of the Netherlands is requested to employ methods of inquiry and preparation similar to those employed in anticipation of the conference just held.

It is not necessary here to discuss at length the subject matter of such a conference. The questions which arise in regard to checks, while not so complicated perhaps as those arising in regard to bills, are nevertheless of considerable importance. They involve questions of the time within which a check should be presented to relieve

the parties from negligence, the consequences of such negligence, and the obligations of banks which accept, indorse, or collect checks which may be found to be invalid or not properly provided for.

Some of the same conflicts of legal system and commercial practice suggest themselves in regard to checks, however, which arise in regard to bills of exchange between the English and American systems on the one hand and those of continental Europe on the other. Under the English bills of exchange act of 1882, "a check is a bill of exchange drawn on a banker payable on demand." And the American definition, in the negotiable instruments law, is substantially the same—"a check is a bill of exchange drawn on a bank, payable on demand." Both laws further set forth that, except as otherwise provided, "the provisions of this act applicable to a bill of exchange payable on demand apply to a check."

Quite different from a legal point of view is the position of the check in other countries, where indeed, for fiscal reasons, it is in some cases deliberately excluded from classification as a bill of exchange. By the French law of June 14, 1865, which first gave a definite status in France to the check in its modern form, "a check is a written instrument which, in the form of an order for payment, enables the drawer to effect the withdrawal, for his account or the account of a third party, of all or a part of the available funds carried to his credit." It is to be noted that the order for the payment of money need not be drawn upon a banker in order to constitute a valid check in France. The issue of a check, moreover, does not constitute in France an act of commerce, which brings the drawer ipso facto under the commercial law. If a check is issued by a trader or merchant, recognized as such by the law, it is a commercial act; if issued by a nontrader, it is not a commercial act and the drawer is subject to the civil law.

Notwithstanding these differences in the legal status of the check in different countries, there are several points involved of considerable interest to American bankers and merchants. One of these is the difference between the American rule in regard to liability for payment of a check to a wrongful holder and the European rule, which greatly restricts such liability. In this particular, the American rule, instead of being in harmony with the English rule, as in most matters affecting bills, stands by itself in opposition to both the English and continental rules. English bankers feel bound to exercise no greater care in paying a check to the actual holder, without inquiry as to the validity of his title, than is exercised by the bankers of the Continent.

When checks first came into general use in England they were almost invariably made payable to bearer. When they began to be made payable to order, a section was included in the stamp act of 1853 (16 and 17 Victoria, ch. 59) which specifically relieved bankers paying such checks from liability for wrongful payment, except as regards the signature of the drawer. This provision was carried over into the bills of exchange act of 1882 in the following terms:

SEC. 60.—When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

The result of this rule is to detract materially from the security of the check as a means of making remittance, since any holder, whether properly identified or not, may convert an ordinary check to order into cash by presenting it at a bank counter. Serious losses have been suffered by American bankers under this rule, in cases where checks have been abstracted from the mails and diverted from the legitimate holders.

What is the remedy for this difficulty? A remedy has been found in England in a system which is slowly making its way on the Continent of Europe and might receive a considerable impetus if recognized and recommended by an international conference. This is the system of the crossed check. A crossed check is a check with two parallel lines on the face, between which are usually written the name of a bank or banking house. A crossed check is payable only through a banker. Hence it is difficult, if not impossible, for an illegitimate holder to obtain cash for it by presentment at a bank counter. He must deposit the check in an account at a bank in order that it may be honored when presented by such bank to the institution upon which it is drawn.<sup>1</sup>

The result of this system of crossed checks is to afford a means of transfer of money much safer than the ordinary check, upon which cash can be drawn directly, and affords no inconveniences to persons having a bank account and depositing checks of which they are legitimate holders in such an account for collection.

The system of crossed checks has been as yet employed but little in the United States. It is not necessary in the matter of inland transactions, for the purposes for which it is employed in England, because the American drawer and payee of a check are protected by the rule making the bank responsible for wrongful payment. In drawing checks upon foreign institutions, however, the system of crossed checks has been employed to a limited extent by American bankers. Its advantages are such that it has gradually obtained a footing on the Continent of Europe, even in the absence of definite legislation giving it legal recognition. Within a very recent date the National Bank of Belgium has begun the issue of crossed checks for remittances between clients at different branches. A notice, prominently posted by the bank at its offices, furnishes the following information:

The crossed cheque has rendered great services in all countries where it has been employed, and especially in England, the country of its origin.

The administration of the National Bank of Belgium has felt that it would be useful to make the system known in Belgium and has decided with this object to permit the crossing of the transfer cheques (*accréditifs*) which it delivers.

The public will hereafter be able to obtain upon demand such transfer cheques bearing across the face two transverse parallel lines, which, according to established usage, will signify that the cheque is payable only through the medium of a banker.

The intervention of a banker for the collection is of a character to avoid the risks resulting from loss or theft, and to permit the sending of the cheques in the majority of cases in an ordinary envelope.

Crossed cheques may be employed for a payment to be made:

1. To a bank or to a banker.
2. To a person who is known to have a current account in a bank.

So obvious are the advantages of the system of the crossed check that efforts have several times been made to introduce the system

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<sup>1</sup> The provisions of the English bills of exchange act of 1882, defining fully the liability of bankers in respect to crossed checks, appear in the appendix to this report.

into France. It is actually in operation by agreement between the Bank of France and several of the large joint-stock banks, but the system requires the sanction of law to permit its general use. To this end measures have been several times introduced and favorably reported in the French Chambers, giving legal sanction to crossed checks. Thus far, although there has not been much organized opposition, none of these measures has become law. The text of the report made to the Senate in 1906 by Senator Ratier, with the bill which was then proposed, appears in the appendix to this report. It is pointed out in this report of Mr. Ratier that the wide use of checks in England, and their comparatively restricted use in France, is due in part to the failure of French law to protect the check, while in England remittances are made by crossed checks through the post-office without the necessity of registering the letters in which they are sent.

Crossed checks are recognized by the Scandinavian law and by the Spanish Code of Commerce, which was extended in 1886 to Cuba, Porto Rico, and the Philippines. A similar practice is recognized by the Austrian law of 1906, which sanctions the indorsement of a check "for account" (*nur zur Verrechnung*).<sup>1</sup>

It is not proposed here to discuss at length the merits of the system of crossed checks or the other form of safeguard involved in making a check "not negotiable," which means, not that it can not be transferred, but that if transferred, it is at the risk of a wrongful holder. It is obvious, however, that the subject is one of great interest in international finance and that it would be unfortunate if the United States, which now plays so important a part in the aggregate commerce of the world, should have no share in framing the rules which are to govern international payments by means of the check.

For the purpose, therefore, of presenting clearly the views of the United States in regard to the provisions of the proposed uniform law on bills of exchange and for the purpose of participating in the preparation of legislation in regard to checks, it is recommended that the Government of the United States be represented at the Second International Conference on these subjects, to be held at The Hague next autumn.

CHARLES A. CONANT,  
*American Delegate.*

To the honorable the SECRETARY OF STATE,  
*Washington, D. C.*

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<sup>1</sup> Lyon-Caen et Renault, "Droit Commercial," Paris, 1907, IV, p. 489.



## APPENDIX A.—DOCUMENTS AND PROCEEDINGS OF THE CONFERENCE.

### I. FINAL PROTOCOL OF THE CONFERENCE.

#### I. PROTOCOLE DE CLOTURE.

La conférence pour l'Unification du Droit relatif à la Lettre de Change et au Billet à Ordre, proposée par les Gouvernements d'Allemagne et d'Italie et convoquée par le Gouvernement des Pays-Bas, s'est réunie, le 23 juin 1910, à La Haye dans la Salle des Séances de la Première Chambre des Etats Généraux.

##### 1. *Liste des Délégués.*

Les Gouvernements dont l'énumération suit, ont pris part à la Conférence pour laquelle ils avaient désigné les délégués nommés ci-après:

##### L'ALLEMAGNE.

M. le docteur Kriege, conseiller actuel intime de légation et jurisconsulte au département des affaires étrangères, membre de la cour permanente d'arbitrage, premier délégué plénipotentiaire.

M. Simons, conseiller intime de régence et conseiller référendaire au département impérial de la justice, second délégué plénipotentiaire.

M. Fischel, associé de la maison Mendelssohn et Co. à Berlin, délégué technique.

M. le docteur von Rosenberg, conseiller de légation et conseiller adjoint au département des affaires étrangères, délégué adjoint.

##### LES ETATS-UNIS D'AMÉRIQUE.

M. Charles A. Conant, banquier à New-York, ancien commissaire extraordinaire du Gouvernement des Etats-Unis pour la réforme du système monétaire aux Iles Philippines, membre de la Chambre de Commerce de l'Etat de New-York.

##### LA RÉPUBLIQUE ARGENTINE.

M. le docteur Manuel van Gelderen, avocat, député national, délégué plénipotentiaire.

##### L'AUTRICHE.

M. le docteur Félix Mayer, conseiller ministériel au ministère impérial royal autrichien de la justice.

#### I. FINAL PROTOCOL.

The Conference for the Unification of Laws concerning Bills of Exchange and Promissory Notes, to order, suggested by the Governments of Germany and Italy, and which was convoked by the Government of the Netherlands, met at The Hague, in the hall of the Upper House of the States-General, on June 23, 1910.

##### 1. *List of delegates.*

The Governments set forth below took part in the conference, and were represented by the delegates whose names follow:

##### GERMANY.

Dr. Kriege, privy councilor of legation and legal adviser in the department of foreign affairs; member of the Permanent Court of Arbitration; first delegate plenipotentiary.

Mr. Simons, privy councilor of the Government; consulting councilor in the imperial department of justice; second delegate plenipotentiary.

Mr. Fischel, partner in the firm of Mendelssohn & Co., Berlin; technical delegate.

Dr. von Rosenberg, councilor of legation and assistant councilor in the department of foreign affairs; assistant delegate.

##### UNITED STATES OF AMERICA.

Mr. Charles A. Conant, banker in New York; former special commissioner of the United States for the reform of the monetary system in the Philippine Islands; member of the Chamber of Commerce of the State of New York.

##### ARGENTINE REPUBLIC.

Dr. Manuel van Gelderen, barrister at law, national deputy; delegate plenipotentiary.

##### AUSTRIA.

Dr. Felix Mayer, ministerial councilor in the imperial and royal Austrian department of justice.

M. le docteur Paul Hammerschlag, directeur de la Société Privilegiée Impériale Royale de Crédit pour le Commerce et l'Industrie à Vienne.

Dr. Paul Hammerschlag, manager of the Chartered Imperial and Royal Society of Credit for Commerce and Industry, in Vienna.

LA HONGRIE.

HUNGARY.

M. le docteur François Nagy, secrétaire d'Etat Royal hongrois en retraite et professeur à l'Université de Budapest.

Dr. Francis Nagy, royal Hungarian secretary of state, retired, and professor at the University of Budapest.

M. le docteur Armand Fodor, juge à la cour d'appel royale de Budapest, attaché au ministère royal hongrois de la justice.

Dr. Armand Fodor, justice of the royal court of appeals, Budapest, attaché of the royal Hungarian department of justice.

M. le docteur Bernard Sichermann, avocat à Kassa.

Dr. Bernard Sichermann, barrister at law at Kassa.

LA BELGIQUE.

BELGIUM.

Son Exc. M. Beernaert, ministre d'Etat, membre de la chambre des représentants, membre de la cour permanente d'arbitrage.

His Excellency Mr. Beernaert, minister of state, member of the House of Representatives, member of the Permanent Court of Arbitration.

Son Exc. M. le Baron Guillaume, envoyé extraordinaire et ministre plénipotentiaire à Paris.

His Excellency Baron Guillaume, envoy extraordinary and minister plenipotentiary at Paris.

M. de la Vallée Poussin, directeur général, chef du cabinet du ministre de la justice.

Mr. de la Vallée Poussin, director general, chief of bureau in the department of justice.

M. Van der Rest, directeur à la Banque Nationale de Belgique.

Mr. Van der Rest, associate manager of the National Bank of Belgium.

LES ETATS-UNIS DU BRÉSIL.

UNITED STATES OF BRAZIL.

M. le docteur Rodrigo Octavio de Langgaard Menezes, avocat, membre de l'Académie brésilienne, professeur de Droit International Privé à Rio de Janeiro.

Dr. Rodrigo Octavio de Langgaard Menezes, barrister at law, member of the Brazilian Academy, professor of private international law at Rio de Janeiro.

LA BULGARIE.

BULGARIA.

M. le docteur P. Dantschow, premier président de la cour de cassation à Sofia.

Dr. P. Dantschow, chief justice of the supreme court in Sofia.

LE CHILI.

CHILE.

M. Carlos Concha, ancien président de la chambre des députés, ancien ministre plénipotentiaire, membre de la Cour Permanente d'Arbitrage.

Mr. Carlos Concha, ex-president of the House of Representatives, ex-minister plenipotentiary, member of the permanent court of arbitration.

M. Eleodoro Yáñez, ancien ministre des affaires étrangères, avocat, conseil de El Banco de Chile.

Mr. Eleodoro Yáñez, former minister of foreign affairs, barrister at law, counsel for the Bank of Chile.

LA CHINE.

CHINA.

M. Kiang Ouang, deuxième secrétaire de la légation de Chine.

Mr. Kiang Ouang, second secretary of the Chinese legation.

M. le docteur Chung-Hui-Wang.

Dr. Chung-Hui-Wang.

LA RÉPUBLIQUE DE COSTA-RICA.

REPUBLIC OF COSTA RICA.

Son Exc. M. Manuel M. de Peralta, envoyé extraordinaire et ministre plénipotentiaire.

His Excellency Mr. Manuel M. de Peralta, envoy extraordinary and minister plenipotentiary.

## LE DANEMARK.

M. le docteur L. A. Grundtvig, professeur à l'Université de Copenhague.

M. Chr. Cloos, négociant, consul de Belgique à Frederikshavn.

## L'ESPAGNE.

Son Exc. M. J. de la Rica y Calvo, envoyé extraordinaire et ministre plénipotentiaire.

M. Ramon Sánchez de Ocaña, chef de division au ministère de la justice.

## LA FRANCE.

M. Louis Renault, ministre plénipotentiaire, membre de l'Institut, jurisconsulte du ministère des affaires étrangères, professeur à la faculté de droit de Paris, membre de la Cour Permanente d'Arbitrage.

M. Charles Lyon-Caen, membre de l'Institut, professeur à la faculté de droit de Paris.

M. Paul Ernest Picard, secrétaire-général de la Banque de France, délégué technique.

## LA GRANDE-BRETAGNE.

Son Exc. Sir George Buchanan, G. C. V. O., K. C. M. G., envoyé extraordinaire et ministre plénipotentiaire, premier délégué.

Sir Mackenzie Dalzell Chalmers, K. C. B., ancien sous-secrétaire d'état permanent du ministère de l'intérieur.

M. Frederick Huth Jackson, directeur à la Banque d'Angleterre, président de l'Institut des Banquiers.

## LA RÉPUBLIQUE D'HAÏTI.

Son Exc. M. Georges Sylvain, envoyé extraordinaire et ministre plénipotentiaire à Paris.

## L'ITALIE.

Son Exc. M. le Comte Joseph Sallier de la Tour, Duc de Calvello, envoyé extraordinaire et ministre plénipotentiaire.

M. César Vivante, professeur ordinaire à la faculté de droit de Rome, membre de l'académie des "Lincei."

## LE JAPON.

M. K. Makino, juge à la cour de cassation.

M. K. Nonaka, secrétaire au ministère des finances.

## LE LUXEMBOURG.

M. le docteur Würth-Weiler, directeur de la Banque Internationale et membre de la Chambre de Commerce à Luxembourg.

## DENMARK.

Dr. L. A. Grundtvig, professor at the University of Copenhagen.

Mr. Chr. Cloos, merchant, Belgian consul at Frederikshavn.

## SPAIN.

His Excellency Mr. J. de la Rica y Calvo, envoy extraordinary and minister plenipotentiary.

Mr. Ramon Sanchez de Ocaña, chief of bureau in the department of justice.

## FRANCE.

Mr. Louis Renault, minister plenipotentiary, member of the French Institute, legal adviser at the ministry of foreign affairs, professor at the law faculty of Paris, member of the Permanent Court of Arbitration.

Mr. Charles Lyon-Caen, member of the French Institute, professor at the law faculty of Paris.

Mr. Paul Ernest Picard, secretary general of the Bank of France, technical delegate.

## GREAT BRITAIN.

His Excellency Sir George Buchanan, G. C. V. O., K. C. M. G., envoy extraordinary and minister plenipotentiary, first delegate.

Sir Mackenzie Dalzell Chalmers, K. C. B., late permanent undersecretary of state for the home department.

Mr. Frederick Huth Jackson, director of the Bank of England, president of the Institute of Bankers.

## REPUBLIC OF HAÏTI.

His Excellency Mr. Georges Sylvain, envoy extraordinary and minister plenipotentiary at Paris.

## ITALY.

Mr. César Vivante, professor in ordinary at the law faculty in Rome, member of the Academy of the Lincei.

## JAPAN.

Mr. K. Makino, judge of the supreme court.

Mr. K. Nonaka, secretary at the department of finance.

## LUXEMBURG.

Dr. Würth-Weiler, manager of the International Bank, member of the chamber of commerce of Luxembourg.



LE MEXIQUE.

Son Exc. M. Olarte, envoyé extraordinaire et ministre plénipotentiaire.

LE MONTÉNÉGRO.

Son Exc. M. Schneider, conseiller privé actuel de Russie, sénateur, premier délégué.

M. Nobel, conseiller d'état actuel de Russie, membre du conseil du commerce et de manufacture, second délégué.

M. le docteur Granfelt, assesseur à la cour aulique impériale à Wiborg, délégué.

LE NICARAGUA.

M. J. Brenning.

LA NORVÈGE.

M. F. V. N. Beichmann, président de la cour d'appel de Trondhjem, premier délégué plénipotentiaire.

M. J. L. Andersen Aars, directeur à la banque "Centralbanken for Norge," à Christiania, second délégué plénipotentiaire.

LE PARAGUAY.

M. le docteur E. Ayala.

LES PAYS-BAS.

Son Exc. M. T. M. C. Asser, ministre d'état, membre du conseil d'état, membre de la Cour Permanente d'Arbitrage.

M. E. N. Rahusen, membre de la Première Chambre des États-Généraux.

M. D. Josephus Jitta, professeur à l'Université d'Amsterdam.

LE PORTUGAL.

M. C. Rangel de Sampaio, Chargé d'Affaires a-i.

LA RUSSIE.

Son Exc. M. Schneider, conseiller privé actuel, sénateur, premier délégué.

M. Nobel, conseiller d'état actuel, membre du conseil du commerce et de manufacture, second délégué.

M. le docteur Granfelt, assesseur à la cour aulique impériale de Wiborg, représentant pour les administrations spéciales du Grand-Duché de Finlande.

LA SERBIE.

M. Spassoyé Radoitchitch, juge à la cour de cassation et professeur honoraire de droit commercial et de droit de change à l'Université de Belgrade, délégué plénipotentiaire.

MEXICO.

His Excellency Mr. Olarte, envoy extraordinary and minister plenipotentiary.

MONTENEGRO.

His Excellency Mr. Schneider, privy councilor of Russia, senator, first delegate.

Mr. Nobel, councilor of state of Russia, member of council for commerce and industry, second delegate.

Dr. Granfelt, judge of the Imperial Aulic Court of Wiborg, delegate.

NICARAGUA.

Mr. J. Brenning.

NORWAY.

Mr. F. V. N. Beichmann, chief justice of the court of appeals of Trondhjem, first delegate plenipotentiary.

Mr. J. L. Andersen Aars, manager of the "Centralbanken for Norge," in Christiania, second delegate plenipotentiary.

PARAGUAY.

Dr. E. Ayala.

NETHERLANDS.

His Excellency Mr. T. M. C. Asser, minister of state, member of the council of state, member of the Permanent Court of Arbitration.

Mr. E. N. Rahusen, member of the Upper House of the States General.

Mr. D. Josephus Jitta, professor at the University of Amsterdam.

PORTUGAL.

Mr. C. Rangel de Sampaio, chargé d'affaires ad interim.

RUSSIA.

His Excellency Mr. Schneider, privy councilor, senator, first delegate.

Mr. Nobel, councilor of state, member of the council for commerce and industry, second delegate.

Dr. Granfelt, judge of the imperial aulic court, Wiborg; representative of the special administration of the Grand-Duchy of Finland.

SERVIA.

Mr. Spassoyé Radoitchitch, judge of the supreme court, honorary professor of commercial law and exchange law at the University of Belgrade, delegate plenipotentiary.

## LE SIAM.

M. le docteur Corragioni d'Orelli, conseiller de légation à Paris, membre de la Cour Permanente d'Arbitrage.

## LA SUÈDE.

Son Exc. M. le Comte Albert Ehrens-vård, envoyé extraordinaire et ministre plénipotentiaire, délégué.

M. Axel Carlander, négociant, président du conseil municipal de la ville de Gothembourg, délégué adjoint.

## LA SUISSE.

Son Exc. M. G. Carlin, envoyé extraordinaire et ministre plénipotentiaire, délégué plénipotentiaire.

M. Kundert, président de la direction de la Banque Nationale suisse, à Zurich, délégué plénipotentiaire.

M. le docteur Wieland, professeur à l'Université de Bâle, délégué plénipotentiaire.

## LA TURQUIE.

Osman Halim Bey, président de la section pénale de la cour de cassation à Constantinople.

Dans une série de réunions tenues du 23 juin au 25 juillet 1910, la conférence a arrêté l'avant-projet d'une convention et l'avant-projet d'une loi uniforme, dont la teneur suit et qu'elle soumet à l'appréciation des Gouvernements représentés.

2. *Avant-projet d'une convention sur l'unification du droit relatif à la lettre de change et au billet à ordre.*

## ARTICLE 1.

Les Etats contractants s'engagent à introduire dans leurs territoires respectifs, soit dans le texte original, soit dans leurs langues nationales, la loi ci-annexée sur la lettre de change et le billet à ordre, qui devra entrer en vigueur en même temps que la présente convention.

Cet engagement s'étend aux colonies, possessions ou protectorats et aux circonscriptions consulaires judiciaires des Etats contractants dans la mesure où leurs lois métropolitaines s'y appliquent.

## ARTICLE 2.

Par dérogation à l'article premier, alinéa 1, 1<sup>o</sup> de la loi, chaque Etat contractant peut prescrire que des lettres de change créées sur son territoire, qui ne contiennent pas la dénomination de lettre de change, sont valables, pourvu qu'elles contiennent l'indication expresse qu'elles sont à ordre.

## SIAM.

Dr. Corragioni d'Orelli, councilor of legation at Paris, member of the Permanent Court of Arbitration.

## SWEDEN.

His Excellency Count Albert Ehrens-vård, envoy extraordinary and minister plenipotentiary, delegate.

Mr. Axel Carlander, merchant, president of the municipal council of the city of Gothenburg, assistant delegate.

## SWITZERLAND.

His Excellency Mr. G. Carlin, envoy extraordinary and minister plenipotentiary, delegate plenipotentiary.

Mr. Kundert, chairman of the board of directors of the National Bank of Switzerland, Zurich, delegate plenipotentiary.

Dr. Wieland, professor at the University of Basle, delegate plenipotentiary.

## TURKEY.

Osman Halim Bey, chief justice of the criminal bench of the supreme court in Constantinople.

At a number of meetings held between June 23 and July 25, 1910, the conference drew up the advance draft of a convention, and the advance draft of a uniform law, set forth below, which are hereby submitted for the consideration of the Governments represented.

2. *Advance draft of a convention for the unification of laws relating to bills of exchange and promissory notes.*

## ARTICLE 1.

The contracting States undertake to introduce in their respective countries, either in the original text or in their national languages, the law on bills of exchange and promissory notes annexed hereto, which shall come into force at the same time as the present convention.

This agreement shall extend to the colonies, possessions, or protectorates, and to the jurisdictions of the consular courts of the contracting States, so far as the laws of the mother country apply to them.

## ARTICLE 2.

In derogation from Article 1, paragraph 1, first provision of the law, each contracting State may prescribe that bills of exchange issued within its territory, which do not bear the designation "Bill of exchange," shall be valid, provided they contain the express indication that they are drawn to order.

## ARTICLE 3.

Par dérogation à l'article 3, alinéa 4, de la loi, chaque Etat contractant a la faculté de prescrire qu'une lettre de change stipulée payable au porteur sera considérée comme nulle sur son territoire, si elle y a été créée, acceptée, avalisée ou si elle y est payable.

## ARTICLE 4.

Chaque Etat contractant a la faculté de prescrire, par dérogation à l'article 19 de la loi, que, pour un endossement fait sur son territoire, la mention impliquant un nantissement sera réputée non-écrite.

Dans ce cas, la mention sera également considérée comme non-écrite par les autres Etats.

## ARTICLE 5.

Par dérogation à l'article 36, alinéa 1, de la loi, chaque Etat contractant a la faculté de prescrire que, pour garantir un engagement pris en matière de lettre de change sur son territoire, un aval pourra être donné sur ce territoire par un acte séparé indiquant le lieu où il est intervenu.

## ARTICLE 6.

En addition à l'article 38, alinéa 1, de la loi, chaque Etat contractant a la faculté d'admettre des lettres payables en foire sur son territoire et de fixer la date de leur échéance.

Ces lettres seront reconnues valables par les autres Etats.

## ARTICLE 7.

Chaque Etat contractant peut compléter l'article 47 de la loi en ce sens que, pour une lettre de change payable sur son territoire, le porteur sera obligé de la présenter le jour même de l'échéance, l'inobservation de cette obligation ne devant donner lieu qu'à des dommages-intérêts.

Les autres Etats auront la faculté de déterminer les conditions sous lesquelles ils reconnaîtront une telle obligation.

## ARTICLE 8.

Par dérogation à l'article 48, alinéa 2, de la loi, chaque Etat contractant peut autoriser le porteur à refuser sur son territoire un paiement partiel, si le paiement n'est pas offert au porteur en son domicile ou après le protêt.

Le droit ainsi reconnu au porteur doit être admis par les autres Etats.

## ARTICLE 3.

In derogation from article 3, paragraph 4 of the law, each contracting State may prescribe that a bill of exchange bearing the stipulation payable to bearer shall be considered void within its territory, if it has been drawn, accepted, or guaranteed (by *aval*) within its boundaries, or if it is payable there.

## ARTICLE 4.

Each contracting State may prescribe, in derogation from article 19 of the law, that, in an endorsement made within its territory, any mention implying a pledge shall be deemed invalid.

In such a case, said mention shall also be deemed invalid in the other States.

## ARTICLE 5.

In derogation from article 36, paragraph 1 of the law, each contracting State shall have the power to prescribe that, in order to give security in matters of bills of exchange within its territory, a guarantee may be given within said territory on a separate document, specifying the place where it was executed.

## ARTICLE 6.

In addition to article 38, paragraph 1 of the law, each contracting State shall have the power to allow bills payable at a fair within its territory, and to fix the date of their maturity.

Such bills shall be recognized as valid by the other States.

## ARTICLE 7.

Each contracting State may complete article 47 of the law in such a way that for a bill of exchange payable within its territory the holder shall be bound to present it on the day of its maturity, the failure to obey this clause only giving rise to an action for damages.

The other States shall have the power to determine under what conditions they will recognize such an obligation.

## ARTICLE 8.

In derogation from article 48, paragraph 2 of the law, each contracting State may authorize the holder within its territory to refuse a partial payment, if the payment is not tendered to the holder at his place of business or is tendered after protest.

Such a right given to the holder shall be recognized by the other States.

## ARTICLE 9.

Par dérogation à l'article 52 de la loi, chaque Etat contractant a la faculté de prescrire qu'avec l'assentiment du porteur, les protêts à dresser sur son territoire peuvent être remplacés par une déclaration datée et écrite sur la lettre de change même, signée par le tiré et transcrite sur un registre public dans le délai fixé pour les protêts.

Une telle déclaration sera reconnue par les autres Etats.

## ARTICLE 10.

Chaque Etat contractant a la faculté de prescrire que l'avis du non-paiement prévu par l'article 55, alinéa 3, de la loi pourra être donné par l'officier public chargé de dresser le protêt.

## ARTICLE 11.

Chaque Etat contractant a la faculté de prescrire que, pour les lettres de change dont l'accepteur est domicilié sur le territoire, des cas dans lesquels l'insolvabilité est légalement constatée sont assimilés aux cas prévus dans l'article 62, alinéa 1, de la loi.

Les effets d'une telle assimilation seront reconnus par les autres Etats.

## ARTICLE 12.

Chaque Etat contractant est libre de décider que, dans le cas de déchéance ou de prescription, il subsistera sur son territoire une action contre le tireur qui n'a pas fait provision ou qui se serait enrichi injustement. La même faculté existe, en cas de prescription, en ce qui concerne l'accepteur qui a reçu provision ou se serait enrichi injustement.

La question de savoir si le tireur est obligé de fournir provision à l'échéance et si le porteur a des droits spéciaux sur cette provision reste en dehors de la loi et de la présente convention.

## ARTICLE 13.

En complément des articles 80 et 81 de la loi, chaque Etat contractant peut, pour le cas de perte d'une lettre de change payable sur son territoire, déterminer les conditions sous lesquelles le paiement de la lettre peut être exigé moyennant caution et en vertu d'une décision judiciaire ou établir une procédure d'annulation de la lettre perdue.

Les autres Etats ont la faculté de déterminer les conditions sous lesquelles ils reconnaîtront les décisions judiciaires rendues en conformité de l'alinéa précédent.

## ARTICLE 9.

In derogation from article 52 of the law each contracting State may prescribe that, the holder assenting, protests to be drawn within its territory may be replaced by a declaration dated and written upon the bill of exchange itself, signed by the drawee, and transcribed in a public register within the time fixed for protests.

Such a declaration shall be recognized by the other States.

## ARTICLE 10.

Each contracting State shall have the power to prescribe that the notice of non-payment, provided for in article 55, paragraph 3 of the law, may be given by the public official charged with drawing up the protest.

## ARTICLE 11.

Each contracting State shall have the power to prescribe that when the insolvency of the acceptor of a bill of exchange residing within its territory is legally established, such cases shall be assimilated to those provided for in article 62, paragraph 1 of the law.

The effect of such assimilation shall be recognized by the other States.

## ARTICLE 12.

Each contracting State shall be free to decide, in case of the loss of recourse or prescription, that there shall lie within its territory an action against the drawer who has not provided cover or who has acquired any inequitable gain in respect of it. The same power shall exist, in case of prescription, when the acceptor has received cover or has acquired any inequitable gain in respect of it.

The question whether the drawer shall be bound to provide cover at maturity, and whether the holder has any special rights over said cover, shall be outside the scope of the law and of the present convention.

## ARTICLE 13.

As a supplement to articles 80 and 81 of the law, each contracting State may, in case of the loss of a bill of exchange payable within its territory, fix the terms under which payment of the bill may be demanded on giving an indemnity and under a judicial decision, or may establish a procedure for the annulment of lost bills.

The other States shall have the power to fix the terms under which they will recognize the judicial decisions given in accordance with the preceding paragraph.

## ARTICLE 14.

Chaque Etat contractant a la faculté de prescrire que des cas qui constituent une mise en demeure de l'endosseur sont assimilés à l'exercice de l'action contre l'endosseur, prévu dans l'article 82, alinéas 3 et 5, de la loi.

Il a également la faculté de déterminer, en complétant l'article 82, les causes de suspension et d'interruption de la prescription des actions résultant d'une lettre de change et qui sont à intenter sur son territoire.

Les autres Etats se réservent la faculté de déterminer les conditions sous lesquelles ils reconnaîtront les effets d'une action intentée, en vertu de l'article 82, alinéas 3 et 5, hors de leur territoire, et ceux de l'assimilation prévue dans l'alinéa 1 du présent article. Il en est de même pour les causes de suspension ou d'interruption de la prescription prévues dans l'alinéa précédent.

## ARTICLE 15.

Chaque Etat contractant a la faculté de ne pas reconnaître la validité de l'engagement pris en matière de lettre de change par l'un de ses ressortissants et qui ne serait tenu pour valable dans le territoire des autres Etats contractants que par application de l'article 83, alinéa 2, de la loi.

## ARTICLE 16.

Les Etats contractants ne peuvent subordonner à l'observation des dispositions sur le timbre la validité des engagements pris en matière de lettre de change ou l'exercice des droits qui en découlent.

Ils peuvent toutefois suspendre l'exercice de ces droits jusqu'à l'acquittement des droits de timbre qu'ils ont prescrits.

## ARTICLE 17.

Les Etats contractants se réservent la faculté de ne pas appliquer les principes de droit international privé consacrés par la présente convention ou par la loi en tant qu'il s'agit:

1°. d'un engagement pris hors des territoires des Etats contractants.

2°. d'une loi qui serait compétente d'après ces principes et qui ne serait pas celle d'un des Etats contractants.

## ARTICLE 18.

Les dispositions des articles 2, 4 à 10, 13 à 17, relatives à la lettre de change, s'appliquent également au billet à ordre.

## ARTICLE 14.

Each contracting State shall have the power to prescribe that conditions constituting a demand upon the indorser shall be considered equivalent to bringing the action against the indorser provided for in article 82, paragraphs 3 and 5 of the law.

It shall also have the power to determine, in supplementing article 82, the causes for suspending or interrupting prescription in actions arising on a bill of exchange which are brought within its territory.

The other States reserve for themselves the right to determine under what conditions they will recognize the consequences of an action brought by virtue of article 82, paragraphs 3 and 5, outside of their territory, and the consequences of the assimilation provided for in paragraph 1 of the present article. They shall have the same powers in case of suspension or of interruption of prescription provided for in the preceding paragraph.

## ARTICLE 15.

Each contracting State shall have the power to refuse to recognize the validity of an engagement entered into in regard to a bill of exchange, by any one within its jurisdiction, which would not be held valid within the territory of the other contracting States except by application of article 83, paragraph 2 of the law.

## ARTICLE 16.

The contracting States shall not have the power to subordinate the validity of engagements taken in matters of bills of exchange, or the exercise of rights derived therefrom, to compliance with stamp-tax regulations.

They may, however, suspend the exercise of such rights until the prescribed stamp taxes have been paid.

## ARTICLE 17.

The contracting States reserve for themselves the right not to apply the principles of international private law, sanctioned by the present convention or the law, so far as concerns —

(1) An engagement entered into outside the territories of the contracting States;

(2) A law which would cover the case according to these principles, but which shall not be in force in one of the contracting States.

## ARTICLE 18.

The provisions of articles 2, 4 to 10, 13 to 17, concerning bills of exchange, shall apply as well to promissory notes payable to order.



Il en est de même de l'article 12 quant à la disposition relative à l'enrichissement du souscripteur.

#### ARTICLE 19.

La présente convention et la loi ne visent pas les règles qui, dans les divers pays, sont relatives aux chèques et aux titres à ordre en général. Les Etats contractants se réservent toute liberté de déterminer dans quelle mesure les dispositions de la loi pourront s'y appliquer.

#### ARTICLE 20.

Les Etats contractants prendront soin de ne pas changer l'ordre et, autant que possible, le numérotage des articles de la loi par l'introduction des modifications ou additions auxquelles ils sont autorisés d'après les articles précédents.

#### ARTICLE 21.

Les Etats contractants communiqueront au Gouvernement des Pays-Bas toutes les dispositions qu'ils édicteront en vertu de la présente convention ou en exécution de la loi.

De même, les Etats communiqueront audit Gouvernement les termes qui, dans les langues reconnues sur leur territoire, correspondent à la dénomination de lettre de change et de billet à ordre. Lorsqu'il s'agit d'une même langue, les Etats intéressés s'entendront entre eux autant que possible sur le choix d'un seul et même terme.

Les Etats notifieront, en outre, audit Gouvernement la liste des jours de fêtes légales et des autres jours où le paiement ne peut être exigé dans leurs pays respectifs.

Le Gouvernement des Pays-Bas fera connaître immédiatement à tous les autres Etats contractants les indications qui lui auront été données en vertu des alinéas précédents.

#### ARTICLE 22.

La présente convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à la Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les représentants des Etats qui y prennent part et par le ministre des affaires étrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

This provision shall apply to article 12, as regards the provision covering any inequitable gain by the maker of a promissory note.

#### ARTICLE 19.

The present convention and the law shall not apply to the regulations which, in the different countries, relate to checks and to instruments to order in general. The contracting States reserve for themselves complete liberty to determine to what extent the provisions of the law may apply to these documents.

#### ARTICLE 20.

The contracting States will see to it that the position, and, as far as possible, the numbering of the articles of the law be not altered, when introducing the modifications or additions which they are entitled to make in accordance with the preceding articles.

#### ARTICLE 21.

The contracting States shall communicate to the Government of the Netherlands all the provisions which they shall enact under the present convention or in carrying out the law.

Likewise, the States shall communicate to the said Government the expressions which, in the languages officially recognized within their territories, correspond to the designation of bill of exchange and promissory note to order. When the same language is used in two or more States, these shall agree among themselves as far as possible upon the choice of one and the same expression.

The States shall also submit to the said Government a list of legal holidays and other days when payment can not be required within their respective territories.

The Government of the Netherlands shall immediately transmit to all the other States the information which it shall have received by virtue of the preceding paragraphs.

#### ARTICLE 22.

The present convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be attested in a document signed by the representatives of the States which shall take part therein, and by the minister of foreign affairs of the Netherlands.

The subsequent deposits of ratifications shall be made by means of a written communication addressed to the Government of the Netherlands, and accompanied by the act of ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification qui les accompagnent, sera immédiatement, par les soins du Gouvernement des Pays-Bas et par la voie diplomatique, remise aux Etats qui ont signé la présente convention ou qui y auront adhéré. Dans les cas visés par l'alinéa précédent, ledit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

## ARTICLE 23.

Les Etats non signataires pourront adhérer à la présente convention, qu'ils aient été ou non représentés à la Conférence internationale de la Haye pour l'Unification du Droit relatif à la Lettre de Change et au Billet à Ordre.

L'Etat qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion qui sera déposé dans les archives dudit Gouvernement.

Le Gouvernement des Pays-Bas transmettra immédiatement à tous les Etats qui ont signé la présente convention ou qui y auront adhéré copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

## ARTICLE 24.

La présente convention produira effet, pour les Etats qui auront participé au premier dépôt de ratification, six mois après la date du procès-verbal de ce dépôt et, pour les Etats qui la ratifieront ultérieurement ou qui y adhéreront, six mois après que les notifications prévues dans l'article 22, alinéa 4, et l'article 23 alinéa 2, auront été reçues par le Gouvernement des Pays-Bas.

## ARTICLE 25.

S'il arrivait qu'un des Etats contractants voulût dénoncer la présente convention, la dénonciation sera notifiée, par écrit, au Gouvernement des Pays-Bas qui communiquera immédiatement copie certifiée conforme de la notification à tous les autres Etats en leur faisant connaître la date à laquelle il l'a reçue.

La dénonciation, qui ne pourra se faire qu'après un délai de cinq ans à partir de la date du premier dépôt des ratifications, produira ses effets à l'égard de l'Etat seul

A certified copy of the document attesting the first filing of ratifications, and of the communication mentioned in the preceding paragraph, as well as of the acts of ratifications accompanying them, shall immediately, through the good offices of the Government of the Netherlands, and through diplomatic channels, be transmitted to the States which have signed the present convention, or which have assented to it. In the cases referred to in the preceding paragraph, the said Government shall make known to them, at the same time, the date on which the notification was received.

## ARTICLE 23.

States which are not signatories may assent to the present convention whether they have or have not been represented at the International Conference at The Hague for the Unification of the Law Relating to Bills of Exchange and Promissory Notes.

States wishing to adhere shall notify the Government of the Netherlands of its intention in writing, transmitting at the same time the act of adhesion, which shall be deposited in the archives of said Government.

The Government of the Netherlands shall immediately transmit a certified copy of the notification, as well as of the act of adhesion, with a mention of the date when said notification was received, to all the States which have signed the present convention or which have assented thereto.

## ARTICLE 24.

The present convention shall take effect for the States which shall have participated in the first deposit of ratifications, six months from the date of the document certifying to said deposit, and for the States which ratify later, or assent thereto, six months after the receipt by the Government of the Netherlands of the notification mentioned in article 22, paragraph 4, and article 23, paragraph 2.

## ARTICLE 25.

Should it occur that one of the contracting States wishes to denounce the present convention, notification thereof shall be given in writing to the Government of the Netherlands, which shall immediately forward a certified copy of the notification to all the other States, apprising them of the date when it was received.

The denunciation, which can not take place until five years after the date of the first deposit of ratifications, shall only affect the State which shall have given

qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

## ARTICLE 26.

Après un délai de trois ans à partir du premier dépôt de ratifications, cinq Etats contractants peuvent adresser une demande motivée au Gouvernement des Pays-Bas à l'effet de provoquer la réunion d'une conférence qui délibérerait sur la question de savoir s'il y a lieu d'introduire des additions ou des modifications dans la Loi ou la présente convention.

## THE PROPOSED UNIFORM LAW.

3. *Avant-projet d'une loi uniforme sur la lettre de change et le billet à ordre.*

CHAPITRE I.—*De la création et de la forme de la lettre de change.*

## ARTICLE 1.

La lettre de change doit contenir—

1°. La dénomination de lettre de change (<sup>1</sup>). Cette dénomination doit être écrite dans le texte même du titre et exprimée dans la langue de ce titre.

2°. Le mandat pur et simple de payer une somme déterminée.

3°. Le nom de celui qui doit payer.

4°. L'indication de l'échéance.

5°. Celle du lieu où le paiement doit s'effectuer.

6°. Le nom de celui auquel le paiement doit être fait.

7°. L'indication du lieu et de la date où la lettre est créée.

8°. La signature du tireur.

La lettre de change peut être tirée soit d'un lieu sur l'autre, soit d'un lieu sur même lieu. Il n'est pas nécessaire qu'elle mentionne la valeur fournie.

## ARTICLE 2.

Le titre dans lequel une des énonciations indiquées dans l'article premier fait défaut, n'est pas une lettre de change, sauf dans les cas déterminés par l'alinéa suivant.

La lettre de change dont l'échéance n'est pas indiquée, vaut comme lettre de change à vue; la lettre de change sans indication du lieu de paiement est considérée comme payable au domicile du tiré, pourvu que ce domicile soit indiqué expressément dans la lettre ou puisse être déterminé d'une façon certaine d'après les énonciations mêmes de celle-ci; la lettre de change sans indication du lieu

notice thereof, and one year after its receipt by the Government of the Netherlands.

## ARTICLE 26.

Three years after the first deposit of ratifications, any five contracting States may address a request to the Government of the Netherlands, with the object of procuring the meeting of a conference to deliberate on the question whether there is need for introducing additions or modifications in the law or in the present convention.

3. *Advance draft of a uniform law on bills of exchange and the promissory note to order.*

CHAPTER I.—*Of the issue and form of the bill of exchange.*

## ARTICLE 1.

A bill of exchange must contain—

1. Designation as a bill of exchange.<sup>2</sup> This designation must be written in the body of the instrument and expressed in the national language of such instrument.

2. An unconditional order to pay a sum certain.

3. The name of the party who is to pay.

4. Indication of the date of maturity.

5. Indication of the place where payment is to be made.

6. The name of the party to whom payment should be made.

7. The indication of the place where the bill is drawn and the date of drawing.

8. The signature of the drawer.

A bill of exchange may be drawn in one place upon another or in one place upon the same place. It is not necessary that it specify that value has been given.

## ARTICLE 2.

An instrument in which one of the particulars indicated in Article 1 is lacking does not constitute a bill of exchange, except in the cases set forth in the following paragraph.

A bill of exchange of which the maturity is not indicated shall be deemed to be payable at sight; a bill without indication of the place of payment shall be deemed to be payable at the residence of the drawee, provided that this residence is indicated expressly in the bill or can be determined with certainty from its terms. A bill of exchange without indication of the place where it is drawn shall be

<sup>1</sup> Voir Convention, art. 2.

<sup>2</sup> Vide Convention, art. 2.



de sa création est considérée comme souscrite dans le lieu du domicile du tireur sous les mêmes conditions.

ARTICLE 3.

La lettre de change peut être à l'ordre du tireur lui-même.

Elle peut être tirée sur le tireur lui-même. Dans ce cas, elle est nulle, si elle est à l'ordre du tireur.

Elle peut être tirée pour le compte d'un tiers.

Elle peut être stipulée payable au porteur.<sup>1</sup>

ARTICLE 4.

Sauf les lettres de change payables au porteur, toute lettre de change, même si elle n'est pas expressément tirée à ordre, est transmissible par endossement.

Le tireur peut interdire la transmission de la lettre de change en y insérant les mots "non à ordre" ou une expression équivalente. Dans ce cas, la lettre n'est transmissible que dans les formes et avec les effets ordinaires de la cession.

ARTICLE 5.

Une lettre de change peut être payable au domicile d'un tiers dans le lieu du domicile du tiré. Elle peut aussi être payable dans un autre lieu.

Elle peut indiquer une personne qui pourra payer au besoin; elle peut également indiquer expressément une personne qui pourra accepter au besoin.

ARTICLE 6.

Dans une lettre de change payable à vue ou à un certain délai de vue, il peut être stipulé par le tireur que la somme sera productive d'intérêts. La stipulation d'intérêts dans une autre lettre de change est réputée non-écrite.

Le taux des intérêts doit être indiqué. A défaut de cette indication, ce taux est de cinq pour cent.

Les intérêts courent à partir de la date de la lettre de change, sauf stipulation contraire.

ARTICLE 7.

Si le montant de la lettre de change est écrit à la fois en toutes lettres et en chiffres, elle vaudra pour la somme écrite en toutes lettres.

Si le montant de la lettre de change est écrit plusieurs fois, soit en toutes lettres, soit en chiffres, elle vaudra pour la moindre somme.

deemed to have been signed in the place of residence of the drawer under like conditions.

ARTICLE 3.

A bill of exchange may be drawn to the order of the drawer.

It may be drawn upon the drawer himself, in which case it shall be null if it is to the order of the drawer.

It may be drawn for account of a third party.

It may be stipulated payable to bearer.<sup>2</sup>

ARTICLE 4.

With the exception of bills of exchange payable to bearer, every bill of exchange, even if it is not expressly drawn to order, may be transferred by indorsement.

The drawer may forbid the transfer of the bill of exchange by inserting therein the words, "not to order," or any equivalent expression. In this case, the bill is transferable only with the formalities and with the ordinary effects of an assignment.

ARTICLE 5.

A bill of exchange may be made payable at the residence of a third party in the place of residence of the drawee. It may also be made payable at some other place.

It may indicate a party who shall pay in case of need; it may also indicate expressly a party who is to accept in case of need.

ARTICLE 6.

In a bill of exchange payable at sight or at a certain time after sight, it may be stipulated by the drawer that the amount shall bear interest. Stipulation for interest in any other bill of exchange shall be considered null.

The rate of interest shall be indicated; in default of such indication, the rate shall be five per cent.

Interest shall run from the date of the bill of exchange, in the absence of a stipulation to the contrary.

ARTICLE 7.

If the amount of a bill of exchange is expressed both in words and figures, it shall be valid for the sum written in words.

If the amount of the bill is expressed more than once either in words or figures, it shall be valid for the smallest sum.

<sup>1</sup> Voir Convention, art. 3.

<sup>2</sup> Vide Convention, art. 3.

## ARTICLE 8.

Si une lettre de change porte des signatures de personnes incapables de s'obliger, cela reste sans influence sur la validité des obligations des autres signataires.

## ARTICLE 9.

Quiconque appose sa signature sur une lettre de change en qualité de représentant d'une autre personne est obligé lui-même lorsqu'il n'avait pas le droit de représenter cette personne ou lorsqu'il a dépassé ses pouvoirs.

## ARTICLE 10.

Le tireur est garant de l'acceptation et du paiement.

Toute clause par laquelle il s'exonère de la garantie du paiement, est réputée non-écrite.

Il peut insérer la clause de retour sans frais.

CHAPTER II.—*De l'endossement.*

## ARTICLE 11.

L'endossement doit être écrit sur la lettre de change, sur une feuille qui y est rattachée (allonge) ou sur une copie. Il doit être signé par l'endosseur.

L'endossement est valable, alors même que le bénéficiaire ne serait pas nommé ou que l'endosseur se serait borné à apposer sa signature au dos de la lettre de change, sur une allonge ou au dos d'une copie (endossement en blanc).

La lettre peut être endossée, même au tiré, accepteur ou non, à un endosseur précédent, au tireur, ou à leurs garants. Ces personnes peuvent l'endosser à nouveau.

## ARTICLE 12.

L'endossement d'une lettre de change au porteur vaut seulement aval de la signature du tireur.

Sur toute autre lettre de change l'endossement au porteur est nul.

Est nul également l'endossement partiel.

Toute condition ajoutée à l'endossement est réputée non-écrite.

## ARTICLE 13.

L'endossement transmet au porteur tous les droits découlant de la lettre de change.

L'endosseur est garant de l'acceptation et du paiement, sauf clause contraire.

## ARTICLE 8.

If a bill of exchange bears the signatures of parties not having the capacity to contract, this fact shall not affect the validity of the obligations of other signers.

## ARTICLE 9.

Whoever places his signature on a bill of exchange as representative of another person shall be himself liable on the bill, when he has not the right to represent said person or when he has exceeded his powers.

## ARTICLE 10.

The drawer guarantees acceptance and payment of the bill.

Any stipulation by which he exempts himself from guarantee of payment shall be considered null.

He may insert the clause, "return without costs."

CHAPTER II.—*Of indorsement.*

## ARTICLE 11.

The indorsement must be written upon the bill of exchange, or on a sheet attached thereto (allonge), or on a copy. It must be signed by the indorser.

Indorsement shall be valid, although the person to whom the bill is indorsed is not named or although the indorser has confined himself to placing his signature on the back of the bill of exchange, or on an "allonge," or on the back of a copy (indorsement in blank).

A bill may be indorsed to the drawee, whether he is acceptor or not, to a previous indorser, or to the drawer, or to their guarantors. Such parties may again indorse it.

## ARTICLE 12.

The indorsement of a bill of exchange to bearer shall operate only as guarantee (aval) of the signature of the drawer.

On any other bill of exchange indorsement to bearer shall be invalid.

Partial indorsement shall also be invalid.

Any condition added to an indorsement shall be considered null.

## ARTICLE 13.

Indorsement shall transfer to the holder all the rights arising from the bill of exchange.

The indorser, in the absence of a contrary stipulation, is guarantor of acceptance and of payment.

ARTICLE 14.

Si l'endossement est en blanc, le porteur peut—

- 1°. Remplir le blanc de son nom.
- 2°. Remplir le blanc du nom d'une autre personne.
- 3°. Remettre la lettre à un tiers sans l'endosser et sans remplir le blanc.

4°. L'endosser à nouveau en blanc ou au nom d'une autre personne.

ARTICLE 15.

L'endossement peut indiquer une personne pour payer au besoin.

Il peut être fait sans garantie du paiement, à moins que l'endosseur soit le tireur lui-même.

Il peut interdire au porteur d'endosser la lettre de change à nouveau. Dans ce cas, l'endosseur n'est pas garant envers ceux auxquels la lettre aurait été transmise.

Il peut contenir la clause de retour sans frais.

Les clauses insérées dans un endossement n'ont d'effet qu'à l'égard de l'endosseur dont elles émanent.

ARTICLE 16.

Le porteur d'une lettre endossée est considéré comme porteur légitime s'il justifie de sa propriété par une suite ininterrompue d'endossements, même si le dernier endossement est en blanc.

Quand un endossement en blanc est suivi d'un autre endossement, celui qui a revêtu la lettre de ce dernier endossement, est présumé l'avoir acquise par l'endossement en blanc.

ARTICLE 17.

Les personnes obligées en vertu de la lettre de change ne peuvent opposer au porteur que:

- 1°. Les exceptions qui leur appartiennent directement contre le porteur.
- 2°. Les exceptions fondées sur leur incapacité de s'obliger.
- 3°. Les exceptions se rattachant au texte même de la lettre de change ou aux mentions qui y figurent.
- 4°. Les exceptions fondées sur les dispositions de la présente loi.

En cas de mauvaise foi du porteur, les obligés peuvent lui opposer même les exceptions dont ils auraient pu se prévaloir contre le porteur précédent.

ARTICLE 14.

If the indorsement is in blank, the holder may—

1. Fill up the blank with his own name.
2. Fill up the blank with the name of another person.
3. Transfer the bill to a third party without indorsing it and without filling up the blank.
4. Again indorse it in blank or to the name of another person.

ARTICLE 15.

An indorsement may indicate a party who is to pay in case of need.

It may be given without guarantee of payment, unless the indorser is himself the drawer.

It may prohibit the holder from further indorsing the bill. In this case, the indorser is not a guarantor to those parties to whom the bill may be transferred.

It may contain the stipulation, "return without costs."

Stipulations inserted in an indorsement shall affect only the indorser who inserts them.

ARTICLE 16.

The holder of an indorsed bill of exchange shall be deemed to be its lawful owner, provided that he proves his ownership by an uninterrupted succession of indorsements, even though the last indorsement be in blank.

When an indorsement in blank is followed by another indorsement, the person who has placed this last indorsement on the bill is presumed to have acquired the bill under an indorsement in blank.

ARTICLE 17.

The parties liable on a bill of exchange can set up against the holder only:

1. The defenses which they have directly against the holder.
2. The defenses founded on their incapacity to contract.
3. The defenses arising from the text of the bill or the particulars which it contains.
4. The defenses founded on the provisions of the present law.

In case the holder is not a holder in good faith, the parties liable may set up against him the defenses of which they would have been able to avail themselves against the preceding holder.

## ARTICLE 18.

Lorsque l'endossement contient la mention "valeur en recouvrement, pour encaissement, par procuration" ou toute autre mention impliquant un mandat, le porteur est considéré comme le mandataire de l'endosseur.

Il peut exercer tous les droits dérivant de la lettre de change; mais il ne peut endosser celle-ci qu'à titre de procuration.

Les obligés ne peuvent opposer au porteur que les exceptions qui seraient opposables à l'endosseur, si l'endossement fait à titre de procuration n'avait pas eu lieu.

ARTICLE 19.<sup>1</sup>

Lorsque l'endossement contient la mention "valeur en garantie, valeur en gage" ou toute autre mention impliquant un nantissement, le porteur est considéré comme créancier gagiste.

Il peut exercer tous les droits dérivant de la lettre de change, mais il ne peut endosser celle-ci qu'à titre de procuration.

Les obligés ne peuvent opposer à ce porteur les exceptions dont ils auraient pu se prévaloir contre celui qui a endossé la lettre à titre de gage, sauf le cas de mauvaise foi.

## ARTICLE 20.

L'endossement postérieur à l'échéance produit les mêmes effets qu'un endossement antérieur. Toutefois, si cet endossement n'a eu lieu qu'après la confection du protêt faute de paiement ou après l'expiration des délais fixés par la Loi pour le dresser, il ne produit que les effets d'une cession ordinaire, régie par le Droit civil.

CHAPTER III.—*De l'acceptation.*

## ARTICLE 21.

Le porteur a, jusqu'à l'échéance, la faculté de présenter la lettre de change à l'acceptation du tiré. Cette présentation peut être faite par un simple détenteur du titre.

La présentation est faite au lieu du domicile du tiré. Est considéré comme tel le lieu indiqué à côté du nom du tiré.

L'acceptation ne peut être demandée qu'un jour ouvrable.

<sup>1</sup> Voir Convention, art. 4.

## ARTICLE 18.

When the indorsement contains the stipulations, "for collection," "by power of attorney," or any other stipulation implying agency, the holder shall be deemed to be the agent of the indorser.

The holder may exercise all the rights arising from the bill of exchange; but he shall be able to indorse it only as agent.

The parties liable shall be able to set up against the holder only the defenses which could be set up against the indorser if indorsement by agency had not taken place.

ARTICLE 19.<sup>2</sup>

When the indorsement contains the stipulation "value as security," "value as pledge," or any other words implying a deposit of securities, the holder shall be deemed to be a pledgee creditor.

He may exercise all rights arising from the bill, but he shall not indorse the latter, except by way of agency.

The parties liable can set up against this holder only the defenses which they could have set up against the party who indorsed the bill by way of pledge, except in the case of bad faith.

## ARTICLE 20.

Indorsement subsequent to maturity shall produce the same effects as prior indorsement. Nevertheless if this indorsement has been given only after the protest for nonpayment has been drawn up, or after the expiration of the time fixed by law for drawing it, it shall have only the effects of an ordinary assignment subject to the civil law.

CHAPTER III.—*Of acceptance.*

## ARTICLE 21.

The holder shall have until maturity the power to present the bill of exchange to the drawee for acceptance. Such presentment may be made by any actual custodian of the instrument.

Presentment shall be made at the residence of the drawee. The place indicated in connection with the name of the drawee shall be considered as such residence.

Acceptance can be demanded only on a business day.

<sup>2</sup> Vide Convention, art. 4.

ARTICLE 22.

Il peut être stipulé, dans toute lettre de change, que la présentation à l'acceptation est obligatoire ou qu'elle devra avoir lieu dans un certain délai. Dans ce dernier cas, si le dernier jour du délai de présentation est un jour de fête légale, la présentation peut encore se faire le premier jour ouvrable qui suit.

Il peut être stipulé, dans toute lettre de change, que la présentation à l'acceptation ne pourra avoir lieu avant une certaine date. Mais l'interdiction absolue de présenter une lettre de change à l'acceptation n'est admise ni dans les lettres de change domiciliées ni dans celles tirées à un certain délai de vue.

Un endosseur peut toujours insérer dans son endossement une clause rendant obligatoire, pour le porteur, la présentation à l'acceptation. Au contraire, un endosseur ne peut point insérer, dans son endossement, la clause "non acceptable," quand la lettre de change était antérieurement susceptible d'acceptation.

Toutes les clauses prohibées par les dispositions du présent article sont réputées non-écrites.

ARTICLE 23.

Les lettres de change à un certain délai de vue doivent être présentées à l'acceptation dans les six mois de leur date, sans prolongation à raison des distances. Ce délai peut être abrégé, soit par le tireur lui-même, soit par un endosseur. Il ne peut être prolongé que par le tireur et au maximum de six mois. Si la prolongation stipulée dépasse six mois, le délai total donné pour la présentation est réduit à une année.

ARTICLE 24.

L'acceptation doit être faite par écrit sur la lettre de change elle-même. Elle s'exprime par le mot "accepté" ou tout autre mot équivalent suivi de la signature du tiré. La seule signature du tiré apposée au recto de la lettre vaut acceptation.

L'acceptation n'a pas besoin d'être datée. Elle doit, toutefois, indiquer la date de la présentation quand il s'agit d'une lettre de change payable à un certain délai de vue ou qui doit être présentée à l'acceptation dans un délai déterminé en vertu d'une clause spéciale.

L'acceptation donnée sur une allonge, sur une copie ou par acte séparé ne fait pas considérer le tiré comme obligé en vertu de la lettre de change.

ARTICLE 22.

It may be stipulated in any bill of exchange that presentment for acceptance shall be obligatory or that it shall take place within a certain time. In the latter case, if the last day for presentment is a legal holiday, presentment may be made on the first business day following.

It may be stipulated in any bill of exchange that presentment for acceptance shall not take place before a certain day; but an absolute prohibition to present a bill of exchange for acceptance shall not be admitted either in the case of bills domiciled or drawn at a certain time after sight.

An indorser may insert in his indorsement a clause rendering presentment for acceptance obligatory upon the holder. On the contrary, an indorser shall not have power to insert in an indorsement a clause against acceptance when the bill was previously subject to acceptance.

Any stipulation prohibited by the provisions of this article shall be considered null.

ARTICLE 23.

Bills of exchange payable a certain time after sight must be presented for acceptance within six months from their date, without extension of time because of distance. This period may be shortened by the drawer or by an indorser. It shall not be extended except by the drawer and for a maximum of six months. If the extension provided for exceeds six months, the total time given for presentment shall be reduced to one year.

ARTICLE 24.

The acceptance must be in writing on the bill of exchange itself. It may be expressed by the word "accepted," or any other equivalent word, followed by the signature of the drawee. The mere signature of the drawee, placed on the face of the bill, shall constitute acceptance.

An acceptance need not be dated. It must, however, indicate the date of presentment in the case of a bill payable at a certain time after sight, or which must be presented for acceptance within a period by a special clause.

Acceptance given on an allonge, on a copy, or by a separate document shall not be deemed to bind the drawee by virtue of the bill of exchange.



## ARTICLE 25.

L'acceptation doit être pure et simple. Mais elle peut être restreinte quant à la somme acceptée.

Toute autre modification apportée dans l'acceptation aux énonciations de la lettre de change peut être considérée par le porteur comme équivalant à un refus d'acceptation. Toutefois, l'accepteur est tenu dans les termes de son acceptation.

## ARTICLE 26.

Quand le tireur a indiqué dans la lettre de change un lieu de paiement autre que celui du domicile du tiré, sans désigner la personne qui doit payer pour le tiré, l'accepteur doit indiquer dans l'acceptation par qui doit être effectué le paiement. A défaut de cette indication, l'accepteur est réputé s'être engagé à payer lui-même au lieu du paiement.

Si la lettre est payable au domicile du tiré, celui-ci peut, dans l'acceptation, indiquer, au lieu de paiement, une adresse autre que celle qui est mentionnée dans la lettre de change.

## ARTICLE 27.

Le tiré auquel la lettre de change est présentée à l'acceptation, doit faire connaître au porteur sa réponse le premier jour ouvrable qui suit la présentation.

Le porteur n'est pas obligé de se dessaisir de la lettre entre les mains du tiré.

## ARTICLE 28.

Par l'acceptation, le tiré s'oblige à payer la lettre de change à l'échéance au porteur légitime.

A défaut de paiement, le porteur, même le tireur, a contre l'accepteur une action directe résultant de la lettre de change.

## ARTICLE 29.

Le tiré qui a revêtu la lettre de change de son acceptation n'a plus le droit d'effacer celle-ci, soit quand il a fait savoir par écrit au porteur ou à un mandataire du porteur ou à un signataire quelconque qu'il a accepté, soit quand il s'est dessaisi du titre.

## ARTICLE 30.

Le tiré est considéré comme ayant refusé son acceptation, en dehors du cas de refus exprès, quand il n'a pas revêtu la lettre de son acceptation le premier jour ouvrable qui a suivi la présentation, quand il a biffé l'acceptation à un moment où il avait encore le droit de le faire (article 29), enfin quand il a modifié, en acceptant, les énonciations de la lettre de change.

## ARTICLE 25.

Acceptance must be absolute and unqualified, but may be restricted as to the amount accepted.

Any other modification of the terms of the bill introduced into the acceptance may be considered by the holder as equivalent to a refusal to accept. The acceptor, however, shall be bound according to the terms of his acceptance.

## ARTICLE 26.

When the drawer has indicated in a bill of exchange a place of payment other than the residence of the drawee, without designating the person who is to pay for the drawee, the acceptor shall indicate in the acceptance by whom the payment is to be made. In default of such an indication, the acceptor shall be bound to pay personally at the place of payment.

If the bill is payable at the residence of the drawee, the latter may indicate in the acceptance a different address at the place of payment than that which is set forth in the bill.

## ARTICLE 27.

When a bill of exchange is presented for acceptance to the drawee, he shall give his reply to the holder on the first business day which follows presentment.

The holder is not bound to leave the bill in the hands of the drawee.

## ARTICLE 28.

By acceptance, the drawee obligates himself to pay the bill of exchange at maturity to the lawful holder.

In default of payment, the holder, even if he is also the drawer, has a direct action on the bill against the acceptor.

## ARTICLE 29.

The drawee who has placed his acceptance on a bill of exchange can not cancel it if he has given notice in writing to the holder, or his agent, or to any other person who has signed the bill, that he has accepted, or if he has given up the instrument.

## ARTICLE 30.

The drawee is deemed to have refused acceptance, apart from the case of express refusal, when he has not affixed his acceptance upon the bill on the first business day following its presentment, when he has canceled the acceptance at a time when he still had the right to do so (Art. 29), or when, in accepting, he has modified the provisions of the bill.

CHAPITRE IV.—*De l'acceptation par intervention.*

## ARTICLE 31.

Après le protêt faute d'acceptation ou le simple refus d'acceptation, quand la lettre de change contient la clause de retour sans frais, ainsi que dans les cas prévus à l'article 62, la lettre peut être, jusqu'à l'échéance, acceptée par une personne intervenant pour le tireur, pour l'un des endosseurs ou pour un signataire quelconque.

L'acceptation par intervention peut être faite par un tiers, même par le tiré à défaut d'acceptation ou par une personne déjà obligée en vertu de la lettre de change.

## ARTICLE 32.

Lorsque le tireur, en vertu de l'article 5, alinéa 2, a indiqué un besoin comme domicilié au lieu du paiement pour accepter la lettre de change, le porteur doit, en temps utile, présenter la lettre au besoin pour obtenir l'acceptation par intervention et faire dresser protêt, si l'acceptation est refusée.

En cas d'omission, il perd les recours qui lui appartiennent avant l'échéance (*rédaction provisoire*).

Dans tous les autres cas le porteur peut ne pas admettre l'acceptation par intervention.

## ARTICLE 33.

L'intervention est mentionnée sur la lettre de change elle-même. Elle est signée par l'intervenant. Elle indique pour le compte de qui elle a lieu. A défaut de cette indication, elle est réputée faite pour le tireur.

L'intervenant est tenu de donner avis de son intervention à celui pour lequel il est intervenu. Cet avis doit être donné par lettre recommandée dans les deux jours ouvrables de l'intervention.

Le signataire de la lettre de change, ainsi averti de l'acceptation par intervention, doit lui-même en donner avis à son garant immédiat dans les deux jours ouvrables de l'avis qu'il a reçu et ainsi de suite, en remontant jusqu'au tireur.

## ARTICLE 34.

En vertu de l'acceptation par intervention, l'accepteur est obligé envers les endosseurs postérieurs à celui pour le compte duquel il est intervenu, de la même façon que celui-ci.

Cette obligation s'éteint, si la lettre non payée n'est pas présentée au paie-

CHAPTER IV.—*Of acceptance for honor.*

## ARTICLE 31.

After protest for nonacceptance, or after mere refusal of acceptance when the bill of exchange is not subject to protest, as well as in the cases provided for in article 62, the bill may, at any time before maturity, be accepted for the honor of the drawer, or one of the indorsers, or any signer.

Acceptance for honor may be made by a third party, even by the drawee who has defaulted in acceptance, or by a person already liable on the bill of exchange.

## ARTICLE 32.

When the drawer, in accordance with paragraph 2 of article 5, has indicated a case of need in the place of payment for the purpose of accepting the bill of exchange, the holder shall, in due time, present the bill to the case of need for acceptance, and, if acceptance is refused, cause the bill to be protested.

In case he fails to do so, he shall lose the recourse which belonged to him before maturity (*provisional form*).

In all other cases the holder may refuse acceptance for honor.

## ARTICLE 33.

The acceptance for honor shall be set forth on the bill of exchange itself and shall be signed by the acceptor for honor. It shall indicate for whose honor it has been given, and in default of such indication shall be considered as given for honor of the drawer.

An acceptor for honor shall give notice of his intervention to the party for whose honor he has accepted. This notice must be given by registered letter not later than the second business day following the intervention.

The signer of the bill of exchange, thus advised of acceptance for honor, must himself give notice to the party immediately liable to him not later than the second business day after he has received his notice, and so on back to the drawer.

## ARTICLE 34.

By accepting for honor, the acceptor becomes liable toward indorsers subsequent to the party for whose honor he accepted, and in the same manner.

This obligation is discharged if the unpaid bill is not presented to the

ment de l'intervenant et que cette présentation n'est pas constatée par un protêt, au plus tard le dernier jour admis pour la confection du protêt faute de paiement.

Le porteur qui admet un intervenant perd contre ses garants le recours qui lui appartient avant l'échéance.

Malgré l'acceptation par intervention, celui pour lequel elle a été faite et ses garants peuvent exiger du porteur, contre paiement de la somme indiquée dans l'article 57, la remise de la lettre de change et, s'il y a lieu, du protêt faute d'acceptation. Celui auquel la lettre a été remise peut recourir immédiatement contre ses garants.

#### CHAPITRE V.—*De l'aval.*

##### ARTICLE 35.

Le paiement de la lettre de change peut être garanti par un aval.

L'aval peut être donné par un tiers ou même par un signataire de la lettre de change, pourvu que, dans ce dernier cas, les garanties du porteur se trouvent augmentées.

##### ARTICLE 36.

L'aval est donné sur la lettre de change, sur une allonge ou sur une copie.<sup>1</sup>

Il résulte de la mention "bon pour aval" ou de toute autre mention équivalente suivie de la signature.

Il est considéré comme résultant de la seule signature du donneur d'aval, apposée au recto de la lettre de change, sauf quand il s'agit de la signature du tiré (article 24, alinéa premier).

L'aval doit indiquer pour le compte de qui il est donné. À défaut de cette indication, il est réputé donné pour le tireur.

##### ARTICLE 37.

Le donneur d'aval est tenu solidairement avec celui dont il a garanti la signature.

Il est obligé, alors même que l'obligation de celui dont il s'est porté garant ne serait pas valable pour toute autre cause qu'un vice de forme.

Il a, quand il paie la lettre de change, le droit de recourir contre celui dont il avait avalisé la signature et contre les garants de celui-ci.

acceptor for honor and if such presentment is not established by protest, not later than the last day allowed for making protest for nonpayment.

The holder who takes an acceptance for honor loses in regard to his guarantors the recourse which belongs to him before maturity.

In spite of acceptance for honor, the party for whose honor it has been given and the parties liable to him may, on payment of the amount indicated by article 57, require of the holder the surrender of the bill of exchange and of the protest for nonacceptance, if such protest has been made. The party to whom the bill has been so delivered may take recourse immediately against the parties liable to him.

#### CHAPTER V.—*Of the guaranty of bills of exchange (aval).*

##### ARTICLE 35.

The payment of a bill of exchange may be guaranteed by an aval.

The aval may be given by a third party or by a signer of the bill of exchange, provided that in the latter case the security of the holder is augmented.

##### ARTICLE 36.

The guaranty may be given upon the bill of exchange, upon an attached sheet, or upon a copy.<sup>2</sup>

Such guaranty (*aval*) is created by the declaration "good for guaranty," (*bon pour aval*), or any similar declaration followed by the signature.

It shall be deemed to be created by the simple signature of the giver of the guaranty placed on the face of the bill of exchange, except when the signature of the drawee is concerned (Article 24, Paragraph 1).

The guaranty must indicate on whose behalf it is given. In default of such indication, it shall be deemed to be given for the drawer.

##### ARTICLE 37.

The giver of a guaranty shall be liable jointly and severally with him whose signature he has guaranteed.

He shall be liable even when the engagement of the party for whom he has given a guaranty shall be invalid for any other cause than a defect of form.

He shall have, when he pays the bill of exchange, the right of recourse against the party whose signature he has guaranteed, and against the parties liable to the latter.

<sup>1</sup> Voir Convention, art. 5.

<sup>2</sup> Vide Convention, art. 5.



CHAPITRE VI.—*De l'échéance.*

## ARTICLE 38.

Une lettre de change peut être tirée—  
À jour fixe.<sup>1</sup>

À un certain délai de date.

À vue.

À un certain délai de vue.

Les usances sont abolies.

Les lettres de change à échéances successives sont nulles.

## ARTICLE 39.

Si l'échéance d'une lettre de change est, soit un jour de fête légale, soit un jour où un paiement ne peut être exigé, elle n'est payable que le premier jour ouvrable qui suit.

## ARTICLE 40.

Aucun jour de grâce, ni légal, ni judiciaire, n'est admis.

## ARTICLE 41.

La lettre de change à vue est payable à sa présentation. Elle doit être présentée au paiement dans les six mois de sa date, sans prolongation à raison des distances. Ce délai peut être abrégé, soit par le tireur lui-même, soit par un endosseur. Il ne peut être prolongé que par le tireur et au maximum de six mois. Si la prolongation stipulée dépasse six mois, le délai total donné pour la présentation est réduit à une année.

## ARTICLE 42.

Les délais de vue courent de la date de l'acceptation ou de celle du protêt faute d'acceptation.

Si l'acceptation n'est pas datée, le porteur peut faire dresser un protêt dont la date fait courir le délai de vue.

Si l'acceptation d'une lettre de change tirée à un certain délai de vue n'a pas été datée et que le protêt pour cette omission n'a pas été dressé, l'échéance sera calculée d'après le dernier jour du délai de présentation tel qu'il est fixé par l'article 23.

## ARTICLE 43.

Les délais de date et les délais de vue ne comprennent pas le jour qui sert de point de départ à ces délais.

<sup>1</sup> Voir Convention, art. 6.

CHAPTER VI.—*Of Maturity.*

## ARTICLE 38.

A bill of exchange may be drawn and payable—

On a fixed date.<sup>2</sup>

At a certain time after date.

At sight.

At a certain time after sight.

Usances are abolished.

Bills of exchange maturing by installments shall be invalid.

## ARTICLE 39.

If the maturity of a bill of exchange shall fall on a legal holiday or a day on which payment can not be demanded, it shall be payable on the first succeeding business day.

## ARTICLE 40.

No day of grace, either legal or judicial, shall be permitted.

## ARTICLE 41.

A bill of exchange payable at sight shall be payable on presentment. It must be presented for payment not later than six months from its date, without extension because of distance. This delay may be abridged either by the drawer or by an indorser. It shall be extended only by the drawer and for a maximum of six months. If the extension provided for exceeds six months, the total time given for presentment shall be reduced to one year.

## ARTICLE 42.

The time after sight shall run from the date of acceptance, or from that of protest for nonacceptance.

If the acceptance is not dated, the holder may cause a protest to be drawn, from whose date the time after sight shall begin to run.

If the acceptance of a bill of exchange drawn at a certain time after sight has not been dated, and if protest for this omission has not been drawn, maturity shall be calculated from the last day of the period given for presentment as fixed by Article 23.

## ARTICLE 43.

The time after date and the time after sight shall not include the day from which the time begins to run.

<sup>2</sup> Vide Convention, art. 6.

## ARTICLE 44.

L'échéance d'une lettre de change tirée à un ou plusieurs mois de date a lieu à la date correspondante du mois dont il s'agit. S'il n'y a pas de date correspondante, la lettre est payable le dernier jour de ce mois.

Quand une lettre de change est payable à un ou plusieurs mois de date ou de vue plus un demi-mois, on compte d'abord, pour déterminer la date de l'échéance, les mois entiers.

## ARTICLE 45.

L'expression "payable à la moitié d'un mois" (mi-janvier, mi-février etc.) signifie le quinze du mois.

Quand, dans une lettre de change, il est parlé de "huit jours" ou de "quinze jours", on entend par là, non une ou deux semaines, mais huit jours ou quinze jours effectifs.

L'expression "demi-mois" signifie un délai de quinze jours.

## ARTICLE 46.

Quand une lettre de change est payable à jour fixe dans un lieu dont le calendrier est différent de celui du lieu de l'émission, la date de l'échéance est celle du calendrier du lieu du paiement, sauf clause contraire.

Quand une lettre de change tirée entre deux places ayant de calendriers différents est payable à un certain délai de date, le point de départ de ce délai est fixé d'après le calendrier du lieu de l'émission, sauf clause contraire.

Quand la lettre de change est payable à un certain délai de vue, le point de départ de ce délai est fixé d'après le calendrier du lieu où la présentation a été faite.

La disposition de l'alinéa 2 s'applique pour le calcul des délais obligatoires de présentation des lettres de change à vue ou à un certain délai de vue.

CHAPITRE VII.—*Du paiement.*

## ARTICLE 47.

Le porteur peut présenter la lettre de change au paiement le jour où le paiement peut être exigé ou l'un des deux jours ouvrables qui suivent.<sup>1</sup>

<sup>1</sup> Voir Convention, art. 7.

## ARTICLE 44.

The maturity of a bill of exchange drawn at one or more months after date shall take effect on the corresponding date of the month in question. If there is no corresponding date, the bill shall be payable on the last day of such month.

When a bill of exchange is payable one or more months after sight, plus a half month, the entire months shall first be counted in order to determine the date of maturity.

## ARTICLE 45.

The expression, payable at the half month ("mid-January," "mid-February," etc.), shall signify the fifteenth of the month.

When "eight days" and "fifteen days" are referred to in a bill of exchange, it is to be construed, not as one or two weeks, but as eight or fifteen days.

The expression, "half-month," shall signify a period of fifteen days.

## ARTICLE 46.

When a bill of exchange is payable at a fixed date in a place whose calendar is different from that of the place of issue, the date of maturity shall, unless otherwise stipulated, be that of the calendar of the place of payment.

When a bill of exchange drawn between two places having different calendars shall be payable a certain time after date, the beginning of this period shall, except for a contrary stipulation, be fixed according to the calendar of the place of issue.

When a bill of exchange shall be payable at a certain time after sight, the time shall be calculated according to the calendar of the place where the presentment has been made.

The provision of paragraph 2 shall apply to the calculation of the time for presentment of bills of exchange at sight, or at a certain time after sight.

CHAPTER VII.—*Of payment.*

## ARTICLE 47.

The holder may present the bill of exchange for payment on the day when payment may be demanded or either of the two succeeding business days.<sup>2</sup>

<sup>2</sup> Vide Convention, art. 7.

## ARTICLE 48.

Le tiré peut exiger que la lettre de change payée lui soit remise avec l'acquit du porteur.

Le porteur ne peut refuser un paiement partiel.<sup>1</sup>

En cas de paiement partiel, le tiré peut exiger que mention en soit faite sur la lettre de change et qu'une quittance lui soit délivrée.

## ARTICLE 49.

Le porteur d'une lettre de change ne peut être contraint d'en recevoir le paiement avant l'échéance.

Le tiré qui paye la lettre de change avant son échéance, est responsable de la validité du paiement.

Le tiré qui paye à l'échéance, n'est valablement libéré que s'il a vérifié la régularité de la suite des endossements non biffés. Il n'est pas obligé de vérifier la signature des endosseurs.

## ARTICLE 50.

Lorsqu'une lettre de change est payable en une monnaie n'ayant pas cours au lieu du paiement, le montant peut en être payé d'après sa valeur au moment de l'échéance dans la monnaie du pays, à moins que le tireur n'ait stipulé que ce montant serait nécessairement payable dans la monnaie qui y est indiquée (clause de paiement effectif dans une monnaie étrangère). Les lois et usages du lieu du paiement servent à déterminer la valeur de la monnaie étrangère.

Toutefois le tireur peut, dans la lettre, stipuler un autre mode de calcul; dans ce cas, le montant ainsi calculé doit être payé dans la monnaie du pays.

## ARTICLE 51.

A défaut de présentation d'une lettre de change au paiement dans le délai fixé par l'article 47, l'accepteur est autorisé à en déposer le montant à l'autorité compétente, aux frais, risques et périls du porteur.

CHAPITRE VIII.—*Des recours du porteur faute d'acceptation et faute de paiement.*

## ARTICLE 52.

Le refus d'acceptation ou de paiement doit être constaté par un acte authentique (protêt faute d'acceptation ou faute de paiement).<sup>2</sup>

## ARTICLE 48.

The drawee is entitled to demand that the bill of exchange which has been paid shall be surrendered to him with the receipt of the holder.

The holder shall not refuse partial payment.<sup>2</sup>

In case of partial payment, the drawee may demand that it shall be specified on the bill of exchange and that a receipt shall be given to him.

## ARTICLE 49.

The holder of a bill of exchange shall not be compelled to receive payment thereof before maturity.

The drawee who pays a bill of exchange before its maturity shall be responsible for the validity of the payment.

The drawee who pays at maturity shall be validly discharged only if he has verified the regularity of the chain of indorsements which have not been canceled. He shall not be bound to verify the signatures of the indorsers.

## ARTICLE 50.

When a bill of exchange is payable in a money not current at the place of payment, the amount may be paid according to its value, at the time of maturity, in the money of the country, unless the drawer has stipulated that it shall be payable in the money therein indicated (stipulation for payment in actual foreign money). The laws and usages of the place of payment shall determine the value of the foreign money.

The drawer may nevertheless stipulate for a different method of calculation, in which case the amounts so calculated shall be paid in the money of the country.

## ARTICLE 51.

In default of presentment of a bill of exchange for payment within the time fixed by article 47, the acceptor shall be authorized to deposit the amount with the proper authorities at the expense and risk of the holder.

CHAPTER VIII.—*Of the recourse of the holder for nonacceptance and for nonpayment.*

## ARTICLE 52.

Refusal to accept or to pay shall be verified by an authentic document (protest for nonacceptance or for nonpayment).<sup>4</sup>

<sup>1</sup> Voir Convention, art. 8.  
<sup>2</sup> Vide Convention, art. 8.

<sup>3</sup> Voir Convention, art. 9.  
<sup>4</sup> Vide Convention, art. 9.

Le protêt faute de paiement ne peut être fait le jour où la lettre de change est payable; il doit être dressé l'un des deux jours ouvrables qui suivent ce jour.

## ARTICLE 53.

La clause de "retour sans frais" insérée dans la lettre de change par le tireur a pour effet de dispenser le porteur, pour exercer les recours, de faire dresser le protêt, soit à défaut d'acceptation, soit à défaut de paiement.

Si, malgré cette clause, le porteur fait dresser le protêt, les frais en restent à sa charge.

La clause de retour sans frais ne dispense le porteur, ni de la présentation de la lettre de change dans les délais légaux, ni des avis à donner à l'endosseur précédent et au tireur en vertu de l'article 55. La non-présentation dans les délais entraîne les déchéances édictées par l'article 64. La preuve de l'inobservation des délais incombe à celui qui s'en prévaut contre le porteur.

La clause de retour sans frais, insérée par le tireur dans la lettre de change, produit ses effets à l'égard de tous les signataires, nonobstant toute stipulation contraire dans les endossements.

Quand cette clause est insérée dans un endossement, les frais du protêt, s'il a été dressé, peuvent être recouvrés contre tous les signataires.

## ARTICLE 54.

Le protêt doit être fait au domicile du tiré ou de la personne chargée du paiement, du besoin, de l'accepteur par intervention (*rédaction provisoire*).

## ARTICLE 55.

Le porteur doit donner avis du défaut d'acceptation ou de paiement à l'endosseur qui le précède dans les deux jours ouvrables qui suivent le jour du protêt ou de la présentation en cas de clause de retour sans frais.

Chaque endosseur doit prévenir dans le même délai celui qui le précède de l'avis qu'il a reçu en lui en donnant copie et ainsi de suite en remontant jusqu'au tireur. Le délai court de la réception de l'avis précédent.

En outre, le porteur doit, dans le délai de quatre jours ouvrables, donner directement avis du non-paiement au tireur.<sup>1</sup>

Protest for nonpayment shall not be made on the day on which the bill of exchange is payable, but shall be drawn on one of the two business days which follow that day.

## ARTICLE 53.

The stipulation, "return without costs," inserted in a bill of exchange by the drawer, shall have the effect of dispensing the holder, in order to exercise recourse, from having a protest drawn either for nonacceptance or for nonpayment.

If, in spite of this stipulation, the holder has a protest drawn, he must bear the costs thereof.

The stipulation, "return without costs," shall not release the holder from presenting the bill of exchange within the time required by law, nor from giving notice to the preceding indorser and to the drawer under the provisions of article 55. Nonpresentment within the required time shall involve the loss of recourse prescribed by article 64. The burden of proof of the failure to duly present the bill lies with the party who seeks to set it up against the holder.

The stipulation, "return without costs," inserted by the drawer in a bill of exchange, shall be effective with regard to all the signers, notwithstanding any stipulation to the contrary in the indorsements.

When this stipulation is inserted in an indorsement, the costs of protest, if one has been drawn, may be recovered against all the signers.

## ARTICLE 54.

The protest must be made at the residence of the drawee or of the person required to pay, or of the case of need, or of the acceptor for honor (*provisional form*).

## ARTICLE 55.

The holder must give notice of dishonor by nonacceptance or nonpayment to the indorser who precedes him, within the two business days which follow the day for protest or which follow presentment in case of the stipulation, "return without costs."

Each indorser shall within the like period give notice to the party who precedes him of the notice which he has received by giving him a copy, and thus in succession back to the drawer. The time shall run from the receipt of the preceding notice.

In addition, the holder must, within a period of four business days, give direct notice of nonpayment to the drawer.<sup>2</sup>

<sup>1</sup> Voir Convention, art. 10.

<sup>2</sup> Vide Convention, art. 10.

Ces avis sont donnés par lettre recommandée. Il suffit que la lettre recommandée soit mise à la poste dans les délais prescrits par les dispositions précédentes.

Il peut être suppléé à l'envoi d'une lettre recommandée par la remise directe d'une lettre missive, pourvu que cette remise soit constatée par un reçu daté et signé du destinataire.

Dans le cas où un endosseur n'a pas indiqué son adresse ou l'a signée d'une façon illisible, l'avis doit être donné à l'endosseur précédent.

Celui qui ne donne pas l'avis du non-paiement dans le délai légal n'encourt pas de déchéance; il est responsable, s'il y a lieu, du dommage causé par sa négligence.

#### ARTICLE 56.

Tous ceux qui ont signé, accepté ou endossé une lettre de change sont tenus à la garantie solidaire envers le porteur.

Le porteur d'une lettre non acceptée ou non payée a le droit de recourir, individuellement ou collectivement, contre les endosseurs, contre le tireur et les autres signataires, sans être astreint à observer l'ordre dans lequel ils se sont obligés.

Le même droit appartient, contre ses garants, à tout signataire d'une lettre de change qui l'a remboursée.

Le recours exercé contre un des obligés n'empêche pas de recourir contre d'autres signataires même postérieurs à ceux qui ont été d'abord poursuivis.

#### ARTICLE 57.

Le porteur peut réclamer à celui contre lequel il recourt—

1°. Le montant de la lettre de change non accepté ou non payé.

2°. Les frais du protêt, des avis donnés par le porteur à l'endosseur précédent et au tireur ainsi que les autres frais.

3°. Les frais de rechange, s'il y a lieu.

4°. Un droit de commission d'un sixième pour cent.

Si le recours est exercé avant l'échéance, déduction sera faite, sur le montant de la lettre, d'un escompte calculé, au choix du porteur, d'après le taux de l'escompte officiel ou d'après le taux du marché tel qu'il existe à la date du recours au lieu du domicile du porteur.

Si le recours est exercé après l'échéance, le montant de la lettre est augmenté par des intérêts à compter de l'échéance, calculés au taux de cinq pour cent.

These notices shall be given by registered letter. It shall be sufficient that the registered letter shall be mailed within the periods prescribed by the foregoing provisions.

For the sending of a registered letter there may be substituted the direct delivery of an ordinary letter, providing that such delivery shall be established by a receipt dated and signed by the addressee.

In a case where an indorser has not indicated his address or has signed in an illegible manner, notice must be given to the preceding indorser.

The party who does not give notice within the legal period shall not lose his right of recourse; he shall be responsible for the damage, if any has occurred, caused by his negligence.

#### ARTICLE 56.

All parties who have signed, accepted, or indorsed a bill of exchange shall be jointly and severally liable to the holder.

The holder of a bill which has been dishonored by nonacceptance or nonpayment shall have the right of recourse, individually or collectively, against the indorsers, against the drawer, and against the other signers, without being compelled to observe the order in which they are obligated.

The same right shall belong to any signer, who has taken up and paid a bill of exchange, against the parties liable to him.

The exercise of recourse against one of the parties liable shall not prevent recourse against other signers, even those subsequent to those first proceeded against.

#### ARTICLE 57.

The holder may recover from the party against whom he exercises recourse—

1. The amount of the bill of exchange not accepted or not paid.

2. The expenses of the protest, of the notices given by the holder to the preceding indorser and to the drawer, as well as other expenses.

3. The expenses of reexchange, if there have been any.

4. A commission of one-sixth of 1 per cent.

If recourse is exercised before maturity, a deduction shall be made from the amount of the bill, of a discount calculated, at the option of the holder, either according to the rate of official discount, or according to the rate in the open market obtaining on the date of the recourse in the place of residence of the holder.

If recourse is exercised after maturity, the amount of the bill shall be increased by interest running from maturity, calculated at a rate of 5 per cent.



## ARTICLE 58.

L'endosseur qui a remboursé la lettre de change peut réclamer à ses garants—

- 1°. La somme intégrale qu'il a payée.
- 2°. Les intérêts de ladite somme, calculés au taux de cinq pour cent, à partir du jour où il l'a déboursée.
- 3°. Les frais qu'il a faits, spécialement les frais de rechange.
- 4°. Un droit de commission d'un sixième pour cent.

## ARTICLE 59.

Celui contre lequel le recours est exercé, peut exiger que la lettre de change remboursée lui soit remise avec le protêt et un compte acquitté.

## ARTICLE 60.

Tout endosseur qui a remboursé la lettre de change peut biffer son endossement et ceux des endosseurs subséquents.

Tout obligé exposé au recours en garantie, peut exiger du porteur la remise de la lettre non acquittée et du protêt, contre paiement de la somme qui pourrait faire l'objet de ce recours.

## ARTICLE 61.

Si un recours est exercé à la suite d'une acceptation partielle, celui qui rembourse la somme pour laquelle l'acceptation n'a pas eu lieu, peut exiger que ce remboursement partiel soit mentionné sur la lettre et qu'il lui en soit donné quittance. Le porteur doit lui remettre une copie certifiée conforme de la lettre et le protêt. Pour les recours à exercer par les endosseurs les uns contre les autres et contre le tireur, la copie remplace l'original de la lettre.

## ARTICLE 62.

Dans les cas de faillite, de cessation de paiements même non constatée par un jugement antérieur, dans les cas de saisie de ses biens demeurée infructueuse et lorsque l'accepteur est déchu du bénéfice du terme à l'égard du porteur, les mêmes recours immédiats qu'en cas de défaut d'acceptation peuvent être exercés après la confection d'un protêt faute de paiement.<sup>1</sup>

La faillite du tireur, même à défaut d'acceptation, ne permet pas au porteur d'agir contre les endosseurs et le tireur.

## ARTICLE 58.

The indorser who has taken up and paid a bill of exchange may recover from the parties liable to him—

1. The entire sum which he has paid.
2. Interest on said sum, calculated at the rate of 5 per cent, beginning with the day of the payment.
3. The expenses which he has incurred, especially the expenses of reexchange.
4. A commission of one-sixth of 1 per cent.

## ARTICLE 59.

The party against whom recourse is exercised may demand on payment that the bill of exchange be delivered to him with the protest and a receipted account.

## ARTICLE 60.

Any indorser who has taken up and paid a bill of exchange may cancel his own indorsement and those of subsequent indorsers.

Any party liable on the bill, subject to recourse as guarantor, may require of the holder the delivery of the dishonored bill and of the protest, upon the payment of the sum which shall be the object of such recourse.

## ARTICLE 61.

Where recourse is exercised in consequence of a partial acceptance, the party who pays the sum uncovered by acceptance may require that this partial payment shall be set forth on the bill, and that he shall be given a receipt therefor. The holder shall furnish him with a certified copy of the bill and of the protest. As to the recourse which may be exercised by the indorsers against each other and against the drawer, a copy may replace the original of the bill.

## ARTICLE 62.

In case of bankruptcy, suspension of payments even when not established by a previous judgment, in case of ineffective execution against his goods, and also in case the acceptor has lost the benefit of the time limit against the holder, the same immediate recourse as in case of default of acceptance may be exercised, after the drawing of a protest for non-payment.<sup>2</sup>

<sup>1</sup> Voir Convention, art. 11.

<sup>2</sup> Vide Convention, art. 11.

ARTICLE 63.

Toute personne ayant le droit d'exercer un recours en vertu des articles 56 et 62 peut, sauf convention contraire insérée dans la lettre de change, se rembourser au moyen d'une nouvelle lettre (retraite) non domiciliée et tirée à vue sur l'un de ses garants.

La retraite comprend, outre les sommes indiquées dans les articles 57 et 58, le droit de courtage payé pour la négociation de la retraite et le droit de timbre de celle-ci.

Si la retraite est tirée par le porteur, le montant en est fixé d'après le cours d'une lettre de change à vue tirée du lieu du paiement sur le lieu où le garant a son domicile.

Si la retraite est tirée par un endosseur, le montant en est fixé d'après le cours d'une lettre à vue tirée du lieu où le tireur de la retraite a son domicile sur le lieu où est domicilié celui sur lequel la retraite est tirée.

ARTICLE 64.

Après l'expiration des délais fixés.

Pour la présentation de la lettre de change à vue ou à un certain délai de vue (articles 23 et 41);

Pour la présentation de la lettre de change qui doit être soumise à l'acceptation dans un délai déterminé en vertu d'une clause spéciale (article 22 alinéa 1<sup>er</sup>);

Pour la confection du protêt faute de paiement (article 52 alinéa 2);

Pour la présentation au paiement en cas de clause de retour sans frais (article 53);  
le porteur est déchu de ses droits contre les endosseurs, contre le tireur et contre tous les autres obligés, à l'exception de l'accepteur et de l'avaliseur de ce dernier.<sup>1</sup>

ARTICLE 65.

Quand la lettre de change est domiciliée, le défaut de protêt fait chez le domiciliataire ne fait pas perdre au porteur ses droits contre l'accepteur. Le porteur doit, qu'il ait ou non fait dresser le protêt chez le domiciliataire, donner avis du défaut de paiement à l'accepteur dans les délais et dans les formes déterminés par l'article 55.

ARTICLE 66.

Le porteur qui a accordé à l'accepteur une prorogation de l'échéance, perd ses droits contre tous ses garants qui n'ont

ARTICLE 63.

Any party having right of recourse by virtue of articles 56 and 62 may, in the absence of a contrary stipulation inserted in the bill of exchange, recover the amount by means of a new bill of exchange (redraft), undomiciled and drawn at sight upon one of the parties liable.

The redraft shall include, in addition to the sum indicated in articles 57 and 58, the brokerage paid for the negotiation of the redraft and the stamp tax upon it.

If the redraft is drawn by the holder, the amount shall be fixed according to the rates of a bill of exchange at sight, drawn in the place of payment upon the place where the party liable resides.

If the redraft is drawn by an indorser, the amount shall be fixed according to the rates for a bill of exchange at sight, drawn in the place where the drawer of the redraft resides upon the place where the party upon whom the redraft is drawn resides.

ARTICLE 64.

After the expiration of the time fixed—

For presentment of a bill of exchange drawn at sight or at a certain time after sight (articles 23 and 41);

For the presentment of a bill of exchange which ought to be presented for acceptance within a specified time as fixed by a special stipulation (article 22, paragraph 1);

For drawing up a protest for nonpayment (article 52, paragraph 2);

For presentment for payment in the case of the clause, "return without costs" (article 53);  
the holder shall lose his right of recourse against the indorsers, the drawer and all other parties liable, with the exception of the acceptor and the party who has guaranteed the acceptor by aval.<sup>2</sup>

ARTICLE 65.

In the case of a domiciled bill of exchange, failure to make protest where the bill is domiciled shall not deprive the holder of his rights against the acceptor. The holder, whether or not he has had protest drawn where the bill is domiciled, must give notice of default of payment to the acceptor within the limits of time and in the forms prescribed by Article 55.

ARTICLE 66.

The holder who has granted to the acceptor an extension of the time of payment shall lose his rights against all other

<sup>1</sup> Voir Convention, art. 12.

<sup>2</sup> Vide Convention, art. 12.

pas consenti à cette prorogation, s'il n'a pas fait dresser le protêt en temps utile.

#### ARTICLE 67.

Quand un obstacle insurmountable à la présentation de la lettre ou à la confection du protêt dans les délais légaux (cas de force majeure) survient au lieu où ces actes doivent être accomplis, les délais sont prolongés.

Le porteur doit présenter la lettre au paiement et faire, s'il y a lieu, dresser le protêt dès que la force majeure a cessé.

Toutefois, quand l'obstacle résultant de la force majeure persiste au delà d'un mois à partir de l'échéance, le porteur peut, aussitôt après l'expiration de ce mois, exercer ses droits contre ses garants.

Pour les lettres de change à vue, le porteur peut, en cas de force majeure, recourir contre ses garants quand la force majeure a duré un mois à partir du jour où, sans elle, le porteur aurait été à même d'exiger le paiement.

Pour les lettres de change tirées à un certain délai de vue, ce délai, en cas de force majeure, commence à courir un mois après le jour où le porteur aurait été à même de présenter la lettre à l'acceptation, si le cas de force majeure ne s'était pas produit.

Ne sont point considérés comme constituant des cas de force majeure régis par les dispositions précédentes les faits personnels au porteur ou à celui qu'il a chargé de présenter la lettre ou de dresser le protêt et qui ont empêché la présentation ou la confection de protêt en temps utile.

#### CHAPITRE IX.—*Du paiement par intervention.*

##### ARTICLE 68.

Toute lettre de change peut, soit après le protêt faute de paiement, soit après la présentation au paiement, si la lettre contient la clause de retour sans frais, être payée par un intervenant, pour le tireur, pour un endosseur ou pour toute autre personne obligée par la lettre de change.

Il en est de même dans les cas où un recours en remboursement est ouvert au porteur avant l'échéance.

Le paiement par intervention peut être fait par toutes les personnes qui peuvent accepter par intervention d'après l'article 31, alinéa 2.

parties liable who have not consented to such extension, unless he has had a protest drawn in due time.

#### ARTICLE 67.

When an insurmountable obstacle to the presentment of a bill or to the drawing of the protest within the time required by law (case of vis major) occurs at the place where these acts should be done, the time for doing them shall be extended.

The holder shall present the bill for payment and, if necessary, have a protest drawn as soon as the vis major shall have ceased.

However, when the obstacle resulting from the vis major continues beyond a period of one month from maturity, the holder may, immediately after the expiration of such month, exercise his rights against the parties liable.

For bills of exchange payable at sight the holder may, in case of vis major, exercise recourse when the vis major has lasted one month from the day on which, if it had not occurred, the holder would have been able to demand payment.

For bills of exchange drawn at a certain time after sight, the time after sight shall begin to run, in case of vis major, one month after the day on which, if it had not occurred, the holder would have been able to present the bill for acceptance.

Facts personal to the holder or to the person intrusted by him with presentment of the bill or with the drawing up of a protest, and which have prevented presentment or preparation of protest in due time, shall not be considered as cases of vis major within the meaning of the foregoing provisions.

#### CHAPTER IX.—*Of payment for honor.*

##### ARTICLE 68.

Every bill of exchange, either after protest for nonpayment, or after presentment for payment if the bill contains the clause "return without costs," may be paid by an intervening party for the honor of the drawer, of an indorser, or of any other person liable on the bill of exchange.

The same provisions shall apply to the cases where recourse for reimbursement may be exercised by the holder before maturity.

Payment for honor may be made by any person who can accept for honor in accordance with article 31, paragraph 2.



Le paiement par intervention doit avoir lieu au plus tard le dernier jour admis pour la confection du protêt faute de paiement. Dans les cas visés par l'alinéa 2 du présent article, il doit être fait avant l'échéance.

#### ARTICLE 69.

Lorsque des besoins ou un accepteur par intervention sont indiqués dans la lettre de change comme domiciliés au lieu du paiement, le porteur doit, en temps utile, présenter la lettre à toutes ces personnes pour obtenir le paiement par intervention. En cas d'omission, il perd son recours contre les endosseurs postérieurs à celui qui a indiqué le besoin ou à celui pour le compte duquel l'intervention a eu lieu (*rédaction provisoire*).

#### ARTICLE 70.

Le paiement par intervention doit comprendre toute la somme qu'aurait à acquitter celui pour lequel il a lieu.

Le porteur peut refuser un paiement partiel par intervention.

S'il refuse un paiement total par intervention, ceux qui auraient été libérés par le paiement cessent d'être obligés.

#### ARTICLE 71.

Lorsqu'un besoin ou un accepteur par intervention refuse le paiement par intervention, ce refus doit être constaté par un protêt dressé en temps utile, à peine de perte du recours du porteur contre les endosseurs postérieurs à celui qui a indiqué le besoin ou à celui pour le compte duquel l'intervention a eu lieu (*rédaction provisoire*).

#### ARTICLE 72.

Le paiement par intervention doit être constaté par écrit sur la lettre de change avec indication de celui pour qui il est fait. A défaut de cette indication, le paiement est considéré comme ayant été fait pour le tireur.

S'il y a concurrence pour le paiement par intervention, la préférence est donnée à celui qui opère le plus de libérations.

La lettre de change et le protêt doivent être remis au payeur par intervention.

#### ARTICLE 73.

Le payeur par intervention est subrogé aux droits du porteur contre celui pour lequel il a payé et contre les garants de celui-ci.

Payment for honor must be made not later than the last day permitted for the drawing of the protest for nonpayment. In the cases provided for by paragraph 2 of the present article, it must be made before maturity.

#### ARTICLE 69.

When the referees in case of need or an acceptor for honor are indicated in the bill of exchange as residing in the place of payment, the holder shall, within the time required by law, present the bill to all such persons in order to obtain payment for honor. In case of negligence, he shall lose his recourse against the indorsers subsequent to the one who has indicated the referee in case of need or the one for whose account the intervention has been made (*provisional form*).

#### ARTICLE 70.

Payment for honor must include the entire sum which would release him for whom it is made.

The holder may refuse a partial payment for honor.

If he refuses full payment for honor, the parties who would have been discharged by the payment shall cease to be liable.

#### ARTICLE 71.

When a referee in case of need or an acceptor for honor refuses to pay for honor, such a refusal shall be certified by a protest drawn up within the time required by law, under penalty of the loss of the recourse of the holder against the indorsers subsequent to the one who has given the reference in case of need or the one for whom intervention has been made (*provisional form*).

#### ARTICLE 72.

Payment for honor should be certified in writing on the bill of exchange, showing for whose honor it is made. In default of such an indication, the payment shall be deemed as having been made for the honor of the drawer.

If there are several applications for the payment of a bill of exchange for honor, the preference shall be given to that which will accomplish the largest number of discharges.

The bill of exchange and the protest must be surrendered to the person who pays for honor.

#### ARTICLE 73.

The payer for honor is subrogated to the rights of the holder against the party for whom he has paid and against all parties liable to such party.

Toutefois, il ne peut revêtir la lettre de change d'un nouvel endossement. Les endosseurs postérieurs au signataire pour qui le paiement a eu lieu sont libérés.

**CHAPITRE X.—Des exemplaires et des copies.**

**ARTICLE 74.**

Le tireur doit délivrer au preneur, sur sa demande, plusieurs exemplaires de la lettre. Les frais en restent à la charge du preneur.

Les exemplaires doivent être identiques et chacun doit être numéroté dans le texte même du titre, faute de quoi, chaque exemplaire est considéré comme une lettre de change distincte.

Tout porteur peut exiger la délivrance de plusieurs exemplaires. Dans ce but, le porteur doit s'adresser à son endosseur immédiat, qui est tenu de lui prêter son nom et ses soins pour agir envers son propre endosseur et, ainsi de suite, en remontant d'endosseur à endosseur jusqu'au tireur. Les endosseurs sont tenus de reproduire leurs endossements sur les nouveaux exemplaires. Les frais nécessités par la délivrance des exemplaires restent à la charge du porteur qui les a réclamés.

**ARTICLE 75.**

Le paiement fait sur un exemplaire est libératoire et fait perdre aux autres exemplaires non acceptés leur valeur. Il n'est pas nécessaire qu'il soit stipulé que le paiement fait sur un exemplaire, annule l'effet des autres.

Un recours ne peut être exercé contre l'endosseur qui a transmis les différents exemplaires à la même personne que moyennant la remise de tous les exemplaires, à moins que le porteur ne fournisse une garantie en raison de la perte du recours de cet endosseur contre les endosseurs précédents et contre le tireur.

Au contraire, l'endosseur qui a transféré les exemplaires à différentes personnes, ainsi que les endosseurs subséquents, sont tenus à raison de tous les exemplaires qui ne leur ont pas été restitués lors du remboursement.

**ARTICLE 76.**

Si un exemplaire a été envoyé à l'acceptation, la personne qui a fait cet envoi doit indiquer sur les autres exemplaires le nom de celui chez lequel cet exemplaire se trouve. Ce dernier est tenu de remettre ledit exemplaire au porteur légitime d'un autre exemplaire.

S'il s'y refuse, le porteur ne peut exercer de recours avant d'avoir fait constater par un protêt que l'exemplaire envoyé à l'acceptation ne lui a pas été délivré et

He shall not, however, give to the bill of exchange a new indorsement. Indorsers subsequent to the party for whose honor payment has been made shall be discharged.

**CHAPTER X.—Of bills in sets and copies.**

**ARTICLE 74.**

The drawer must deliver to the purchaser, upon his demand, several duplicates of the bill, the cost being at the charge of the purchaser.

The duplicates should be identical and each should be numbered in the body of the instrument, in default of which each part will be deemed to be a distinct bill of exchange.

Any holder may require the delivery of several drafts. With this object, the holder may address the preceding indorser, who is bound to lend his name and assistance toward his own indorser, and thus in succession from one indorser to another back to the drawer. The indorsers shall be bound to reproduce their indorsements on the new drafts. The expenses involved in the delivery of drafts shall be at the charge of the holder who has demanded them.

**ARTICLE 75.**

Payment made upon one part of a set shall be conclusive and shall nullify other parts which are not accepted. It is not necessary that it be stipulated that payment, when made on one part, nullifies the effect of the others.

Recourse can be exercised against the indorser who has transmitted different parts to the same person only by means of the delivery of all the parts, unless the holder gives for the loss of recourse of such indorser indemnity against preceding indorsers and the drawer.

The indorser, on the other hand, who has transferred parts to different persons, and all subsequent indorsers, shall be liable for all the parts which have not been restored to him at the time of payment.

**ARTICLE 76.**

When a part of a set has been sent for acceptance, the person who has sent it must indicate on the other parts the name of the party with whom this part may be found. The latter is bound to deliver said part to the lawful holder of another part.

If he refuses to do so, the holder shall not be able to exercise recourse before having established by protest that the part sent for acceptance has not been

que l'acceptation ou le paiement n'a pu être obtenu sur un autre exemplaire.

ARTICLE 77.

Tout porteur d'une lettre de change est autorisé à en faire des copies.

La copie doit reproduire exactement l'original avec les endossements et toutes les autres mentions qui y figurent; elle doit mentionner où s'arrête la copie.

Elle peut être endossée de la même manière et avec les mêmes effets que l'original.

La copie doit mentionner le détenteur du titre original.

Si ce détenteur refuse de le remettre au porteur légitime de la copie, celui-ci ne peut exercer de recours contre les personnes qui ont endossés la copie avant d'avoir fait constater, par un protêt, que l'original ne lui a pas été remis, sans préjudice, s'il y a lieu, d'une action en dommages-intérêts contre le détenteur.

CHAPITRE XI.—*Du faux, des altérations, de la perte de la lettre de change.*

ARTICLE 78.

La falsification d'une signature, même de celle du tireur ou de l'accepteur, ne portent en rien atteinte à la validité des obligations découlant des signatures véritables apposées sur le titre.

ARTICLE 79.

En cas d'altération du texte d'une lettre de change, les signataires postérieurs à cette altération sont tenus conformément au texte altéré. Les signataires antérieurs sont tenus d'après les termes du texte original.

ARTICLE 80.<sup>1</sup>

Le propriétaire d'une lettre de change perdue peut s'en faire délivrer un nouvel exemplaire par le tireur en remontant la suite des endossements. Il en supporte les frais.

Si l'exemplaire perdu a été revêtu de l'acceptation du tiré, le propriétaire ne peut exiger de celui-ci le paiement, sur le nouvel exemplaire, qu'à charge de donner caution.

ARTICLE 81.<sup>2</sup>

En cas de perte d'une lettre de change, le porteur légitime n'est tenu de se dessaisir de la lettre que s'il l'a acquise de mauvaise foi ou si, en l'acquérant, il a commis une faute lourde.

delivered to him and that acceptance or payment can not be obtained upon another part.

ARTICLE 77.

Any holder of a bill of exchange is authorized to make copies of it.

A copy must reproduce the original exactly, including indorsements and all other declarations which appear thereon, and should set forth how far it extends as a copy.

It may be indorsed in the same manner and with the same effects as the original.

The copy must specify the actual holder of the original document.

If this actual holder refuses to deliver it to the lawful holder of the copy, the latter shall not be able to exercise recourse against the persons who have indorsed the copy before having certified by a protest that the original has not been delivered to him, without prejudice to an action for damages, if there is occasion for it, against the party who has wrongfully retained the bill.

CHAPTER XI.—*Of forgeries, alterations, and loss of the bill of exchange.*

ARTICLE 78.

The forgery of a signature, even that of the drawer or the acceptor, shall not impair the validity of the obligations arising from the genuine signatures on the instrument.

ARTICLE 79.

In case of the alteration of the text of a bill of exchange, the signers subsequent to this alteration shall be liable according to the altered text. Prior signers shall be liable according to the terms of the original text.

ARTICLE 80.<sup>3</sup>

The owner of a lost bill of exchange shall have the right to the delivery of a new draft by the drawer, by following back the series of indorsements. He shall meet the costs.

If the lost draft has received the acceptance of the drawee, the owner can demand payment from him upon the new draft only upon giving indemnity.

ARTICLE 81.<sup>4</sup>

In case of the loss of a bill of exchange, the lawful holder is not bound to deliver it up unless he has acquired it in bad faith or if, in acquiring it, he has been guilty of gross negligence.

<sup>1</sup> Voir Convention, art. 13.  
<sup>2</sup> Vide Convention, art. 13.

<sup>3</sup> Voir la note précédente.  
<sup>4</sup> Vide the preceding note.

CHAPITRE XII.—*De la prescription*ARTICLE 82.<sup>1</sup>

Toutes actions, résultant de la lettre de change contre l'accepteur et contre celui qui a avalisé la signature de l'accepteur, se prescrivent par trois ans à compter de la date de l'échéance.

Les actions du porteur contre les endosseurs, contre le tireur et contre leurs garants se prescrivent par six mois à partir de l'échéance ou de la date du protêt s'il en a été dressé un en temps utile.

Les actions en recours des endosseurs les uns contre les autres et contre le tireur se prescrivent par six mois à partir du jour où l'endosseur a remboursé la lettre de change ou du jour où, avant tout remboursement, l'endosseur a été actionné.

L'interruption de la prescription n'a d'effet que contre celui à l'égard duquel l'acte interruptif a été fait.

Tout signataire qui a remboursé une lettre de change ou qui a été actionné en garantie, doit en donner avis à son garant immédiat dans le délai, dans les formes et sous la sanction déterminées par l'article 55. L'endosseur qui reçoit cet avis, doit le communiquer à son garant immédiat et ces avis doivent être répétés en remontant jusqu'au tireur.

CHAPITRE XIII.—*Des conflits de lois.*

## ARTICLE 83.

La capacité d'une personne pour s'engager par lettre de change est déterminée par sa loi nationale. Si cette loi nationale déclare compétente la loi d'un autre Etat, c'est cette dernière loi qui sera appliquée.

La personne qui serait incapable, d'après la loi indiquée par l'alinéa précédent, est néanmoins valablement tenue, si elle s'est obligée sur le territoire d'un Etat d'après la législation duquel elle aurait été capable.<sup>2</sup>

## ARTICLE 84.

La forme d'un engagement pris en matière de lettre de change est réglée par les lois de l'Etat sur le territoire duquel cet engagement a été contracté.

## ARTICLE 85.

La forme du protêt et des autres actes nécessaires à l'exercice ou à la conservation des droits en matière de lettre de

CHAPTER XII.—*Of prescription.*ARTICLE 82.<sup>2</sup>

All claims resulting from a bill of exchange against the acceptor and against the party who has guaranteed the signature of the acceptor by *aval* shall be barred after three years, calculated from the date of maturity.

Claims of the holder against the indorsers, against the drawer, and against their guarantors, shall be barred after six months from maturity, or from the date of the protest, if it has been drawn within the time required by law.

Claims for recourse of the indorsers against each other and against the drawer shall be barred after six months, beginning from the day on which the indorser took up the bill of exchange or from the day when, before any payment, the indorser was sued.

Interruption of prescription shall operate only against the party with respect to whom the interruption applies.

Any signer who has reimbursed a bill of exchange, or who has been sued as guarantor, must give notice to the party immediately liable to him within the time, according to the forms, and under the penalties provided by article 55. The indorser who receives this notice must communicate it to his immediate indorser, and these notices must be repeated, reaching back to the drawer.

CHAPTER XIII.—*Of conflicts of laws.*

## ARTICLE 83.

The capacity of a party to render himself liable on a bill of exchange shall be determined by his national law. If such national law declares the law of another State to be applicable, the latter law shall be applied.

A person who might be incapable of contracting, under the preceding paragraph, shall nevertheless be liable if he has entered into engagements within the territory of a State according to the law of which he would have been competent.<sup>3</sup>

## ARTICLE 84.

The form of any contract on a bill of exchange shall be regulated by the laws of the State within the territory of which such contract was made.

## ARTICLE 85.

The form of protest and of the other acts necessary for the exercise or for the preservation of rights on a bill of exchange

<sup>1</sup> Voir Convention, arts. 12 et 14.  
<sup>2</sup> Vide Convention, arts. 12 and 14.

<sup>3</sup> Voir Convention, art. 15.  
<sup>4</sup> Vide Convention, art. 15.

change est réglée par les lois de l'Etat sur le territoire duquel doit être dressé le protêt ou passé l'acte en question.

#### CHAPITRE XIV. *Du billet à ordre.*

##### ARTICLE 86.

Le billet à ordre contient la promesse pure et simple de payer une somme déterminée. Il est daté et indique le lieu où il est souscrit. Il énonce le nom de celui à l'ordre duquel il est souscrit, l'échéance et le lieu où le paiement doit être effectué. Il est signé par celui qui l'émet.

Il n'est pas nécessaire que le billet à ordre mentionne la valeur fournie.

##### ARTICLE 87.

Toutes les règles relatives à la lettre de change s'appliquent au billet à ordre, sauf les exceptions indiquées ci-après:

1°. Le souscripteur est obligé comme l'accepteur d'une lettre de change. En conséquence, les billets à ordre ne sont pas susceptibles d'acceptation; ni le souscripteur ni celui qui a avalisé sa signature ne peuvent opposer la déchéance au porteur négligent; les actions contre le souscripteur et son avaliseur se prescrivent par trois ans à partir de l'échéance; il ne peut pas être délivré plusieurs exemplaires d'un billet à ordre; le billet à l'ordre du souscripteur est nul.

2°. Pour les billets à ordre payables à un certain délai de vue, ce délai court de la date du visa signé du souscripteur sur le billet. Le refus du souscripteur de donner son visa ou de le dater est constaté par un protêt. La date de ce protêt sert de point de départ au délai de vue.

##### ARTICLE 88.

###### DISPOSITION ADDITIONNELLE.

La présente loi ne s'applique pas au billet au porteur.

La conférence a, en outre, émis les vœux suivants:

##### I.

"Le Gouvernement des Pays-Bas voudra bien, après le délai nécessaire pour examiner l'avant-projet d'une convention et l'avant-projet d'une loi uni-

shall be regulated by the laws of the State within whose territory the protest must be drawn up or the act in question must be done.

#### CHAPTER XIV.—*Of the promissory note to order.*

##### ARTICLE 86.

A promissory note to order shall contain the unconditional promise to pay a sum certain. It shall be dated and shall indicate the place where it is signed. It shall set forth the name of the party to whose order it is drawn, the maturity, and the place where payment is to be made. It shall be signed by the maker.

It is not necessary that the promissory note shall specify the value received.

##### ARTICLE 87.

All provisions relative to bills of exchange shall apply to the promissory note with the exceptions indicated below:

a. The maker is bound in the same manner as the acceptor of a bill of exchange. Consequently, promissory notes shall not be subject to acceptance; neither the maker nor the party who has guaranteed his signature by aval shall be able to set up against the negligent holder that he has lost his rights of recourse; actions against the maker and his guarantor shall be barred after three years, dating from maturity; a promissory note can not be made in a set; and a promissory note payable to the order of the maker shall be void.

b. For promissory notes payable at a certain time after sight, the time shall run from the date of the visa signed by the maker on the note. The refusal of the maker to give his visa or to date it shall be certified by a protest. The date of said protest shall be counted as the beginning of the time after sight.

##### ARTICLE 88.

###### ADDITIONAL PROVISION.

The present law shall not apply to the promissory note payable to bearer.

The conference, in addition, adopted the following recommendations:

##### I.

The Government of the Netherlands, after a sufficient time has elapsed for the examination of the advance draft of the convention and the advance draft of the



forme insérés ci-dessus, convoquer une nouvelle conférence qui aurait pour mandat de fixer le texte définitif de la convention et de la loi de telle sorte que la convention puisse être, dans la conférence même, soumise à la signature des plénipotentiaires.

## II.

“La conférence ultérieure devrait être chargée, en même temps, de délibérer sur l'unification du droit relatif au chèque. Il serait désirable que le Gouvernement des Pays-Bas voulût bien, pour faciliter ces délibérations, employer le procédé si heureusement suivi pour la préparation de la conférence actuelle.”

### 4. Signatures.

Fait à La Haye, le 25 juillet mil neuf cent dix, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas, et dont une copie certifiée conforme sera remise, par la voie diplomatique, à chacun des Gouvernements représentés à la conférence.

#### Allemagne:

KRIEGE.

SIMONS.

ARTHUR FISCHEL.

VON ROSENBERG.

#### Etats-Unis d'Amérique:

CHARLES A. CONANT.

Sous les réserves faites par ma déclaration lue en séance plénière le jeudi 21 juillet dernier.

#### Argentine:

M. VAN GELDEREN.

#### Autriche:

Dr. FELIX MAYER.

Dr. PAUL HAMMERSCHLAG.

#### Hongrie:

ARMAND FODOR.

Dr. BERNARD SICHERMANN.

#### Belgique:

A. BEERNAERT.

#### Brésil:

RODRIGO OCTAVIO DE LANGGAARD MENEZES.

#### Bulgarie:

Dr. PETER DANTSCHOW.

#### Chili:

CARLOS CONCHA.

ELEODORO YÁÑEZ.

#### Chine:

CHUNG HUI WANG.

#### Costa Rica:

MANUEL M. DE PERALTA.

#### Danemark:

CHRISTIAN CLOOS.

#### Espagne:

JOSÉ DE LA RICA Y CALVO.

RAMON SÁNCHEZ DE OCAÑA.

uniform law above set forth, shall call a new conference, which shall have authority to determine the final text of the convention and of the law, in such manner that the convention may be submitted, at the conference itself, for signature by plenipotentiaries.

## II.

The next conference shall be entrusted, at the same time, with the object of deliberating upon the unification of the law regarding checks. It is desired, in order to facilitate these deliberations, that the Government of the Netherlands shall resort to the methods so happily adopted in the preparations for the present conference.

### 4. Signatures.

Done at The Hague, on the 25th of July, 1910, in a single copy, which shall remain on file in the archives of the Government of The Netherlands, and of which a certified copy shall be transmitted, through diplomatic channels, to each of the Governments represented at the conference.

#### Germany:

KRIEGE.

SIMONS.

ARTHUR FISCHEL.

VON ROSENBERG.

#### United States of America:

CHARLES A. CONANT.

Under the reservations made by my declaration read in the plenary session of Thursday, July 21 last.

#### Argentine:

M. VAN GELDEREN.

#### Austria:

Dr. FELIX MAYER.

Dr. PAUL HAMMERSCHLAG.

#### Hungary:

ARMAND FODOR.

Dr. BERNARD SICHERMANN.

#### Belgium:

A. BEERNAERT.

#### Brazil:

RODRIGO OCTAVIO DE LANGGAARD MENEZES.

#### Bulgaria:

Dr. PETER DANTSCHOW.

#### Chile:

CARLOS CONCHA.

ELEODORO YÁÑEZ.

#### China:

CHUNG HUI WANG.

#### Costa Rica:

MANUEL M. DE PERALTA.

#### Denmark:

CHRISTIAN CLOOS.

#### Spain:

JOSÉ DE LA RICA Y CALVO.

RAMON SÁNCHEZ DE OCAÑA.

## France:

L. RENAULT.  
P. E. PICARD.

## Grande-Bretagne:

GEORGE W. BUCHANAN (pour la  
Délégation Britannique).  
Sous réserve des vœux, que la  
Délégation Britannique n'accepte  
pas.

## Haïti:

GEORGES SYLVAIN.

## Italie:

G. DE LA TOUR CALVELLO.  
Prof. CESARE VIVANTE.

## Japon:

K. MAKINO.  
K. NONAKA.

## Luxembourg:

Dr. WÜRTH-WEILER.

## Mexique:

ENRIQUE OLARTE.

## Monténégro:

SCHNEIDER.  
G. GRANFELT.

## Nicaragua:

J. BRENNING.

## Norvège:

BEICHMANN.

## Paraguay:

EUSEBIO AYALA.

## Pays-Bas:

T. M. C. ASSER.  
E. N. RAHUSEN.  
JITTA.

## Portugal:

C. RANGEL DE SAMPAIO.

## Russie:

SCHNEIDER.  
G. GRANFELT.

## Serbie:

SPASSOÏÉ RADOÏTCHITCH.

## Siam:

C. CORRAGIONI D'ORELLI.

## Suède:

ALBERT EHRENSVÄRD.

## Suisse:

CARLIN.

## \*Turquie:

## France:

L. RENAULT.  
P. E. PICARD.

## Great Britain:

GEORGE W. BUCHANAN (for the  
British delegation).  
Under reservations in regard to  
recommendations, which the British  
delegation do not accept.

## Haiti:

GEORGES SYLVAIN.

## Italy:

G. DE LA TOUR CALVELLO.  
Prof. CESARE VIVANTE.

## Japan:

K. MAKINO.  
K. NONAKA.

## Luxemburg:

Dr. WÜRTH-WEILER.

## Mexico:

ENRIQUE OLARTE.

## Montenegro:

SCHNEIDER.  
G. GRANFELT.

## Nicaragua:

J. BRENNING.

## Norway:

BEICHMANN.

## Paraguay:

EUSEBIO AYALA.

## The Netherlands:

T. M. C. ASSER.  
E. N. RAHUSEN.  
JITTA.

## Portugal:

C. RANGEL DE SAMPAIO.

## Russia:

SCHNEIDER.  
G. GRANFELT.

## Servia:

SPASSOÏÉ RADOÏTCHITCH.

## Siam:

C. CORRAGIONI D'ORELLI.

## Sweden:

ALBERT EHRENSVÄRD.

## Switzerland:

CARLIN.

## \*Turkey:



## II. QUESTIONNAIRE OF THE GOVERNMENT OF THE NETHERLANDS.

### QUESTIONNAIRE.

1. La Conférence doit-elle s'occuper exclusivement de la lettre de change et du billet à ordre, en réservant à l'examen d'une conférence ultérieure le droit concernant le chèque?

2. La loi uniforme doit-elle régler d'une manière complète tout le droit de la lettre de change (à l'exception de quelques matières qui, comme la forme des protêts, sont par leur nature même plutôt de la compétence de la loi nationale) ou doit-elle se borner à poser les principes, en laissant à la loi nationale le soin de régler les détails?

3. La loi uniforme doit-elle contenir aussi des règles complémentaires pour la solution des conflits de droit par rapport à la lettre de change?

#### A. DE LA LETTRE DE CHANGE.

##### I.—Création—Formes.

4. La loi <sup>1</sup> doit-elle exiger:

(a) La dénomination de lettre de change?

(b) L'indication de la valeur fournie?

(c) Qu'il y ait remise de place en place?

5. Doit-on permettre—

(a) La création d'une lettre de change au porteur?

(b) La création d'une lettre de change à l'ordre de tireur?

(c) La création d'une lettre de change pour le compte d'autrui?

(d) L'indication d'un besoin?

Et, dans le cas d'une réponse affirmative à la question d,

(e) Cette indication doit-elle avoir les mêmes effets qu'elle émane du tireur ou d'un endosseur?

(f) La clause retour sans frais?

(g) La clause sans garantie?

(h) La clause qui exclut la faculté d'endossement? (Rektawechsel.)

#### EXEMPLAIRES—COPIES.

6. Quelles doivent être les dispositions de la loi par rapport—

(a) À l'obligation du tireur de fournir plus d'un exemplaire de la lettre de change?

<sup>1</sup> Dans ce questionnaire le mot loi est employé pour indiquer la loi uniforme.

### QUESTIONS FOR CONSIDERATION.

1. Should the conference concern itself exclusively with the bill of exchange and the promissory note, reserving for the consideration of a later conference the law concerning the check?

2. Should the uniform law regulate in a complete manner the entire jurisprudence of the bill of exchange (with the exception of some matters, like the form of protests, which are by their nature within the scope of national law) or ought it to restrict itself to laying down the principles, leaving to each nation the function of regulating the details?

3. Should the uniform law contain also supplementary rules for the solution of conflicts of law with reference to the bill of exchange?

#### A. THE BILL OF EXCHANGE.

##### I.—Issue and forms.

4. Should the law <sup>2</sup> require—

(a) Designation as a bill of exchange?

(b) The indication of the amount drawn?

(c) That remittance has been made from one place to another?

5. Should the law permit—

(a) The issue of a bill of exchange to bearer?

(b) The issue of a bill of exchange to the order of the drawer?

(c) The issue of a bill of exchange for account of a third party?

(d) To indicate a case of need (besoin)?

And in case of an affirmative response to the last question,

(e) Should this indication have the same effects when it emanates from the drawer or from an indorser?

(f) The clause, return without costs?

(g) The clause, without recourse?

(h) The clause which excludes the option of indorsement (Rektawechsel)?

#### DRAFTS DRAWN IN SETS—COPIES.

6. What should be the provisions of the law concerning—

(a) The obligation of the drawer to furnish more than one draft of the bill of exchange?

<sup>2</sup> In these questions the word law is used to indicate the uniform law.

(b) A la forme et la rédaction des exemplaires?

(c) Aux droits du porteur d'un exemplaire?

(d) Aux copies?

7. La loi doit-elle régler la traite documentaire? (Connaissance, police, etc.)

## II.—*Endossement.*

8. Que doit-on prescrire par rapport à—

(a) La forme de l'endossement en général?

La loi doit-elle reconnaître plusieurs formes d'endossement avec des effets différents quant à la transmission?

La garantie?

(b) L'endossement en blanc?

(c) L'endossement à titre de procuration?

(d) L'endossement postérieur à l'échéance?

## III.—*Provision.*

9. La loi doit-elle contenir des dispositions relatives à l'obligation du tireur de faire provision et aux conséquences résultant de l'accomplissement et du défaut d'accomplissement de cette obligation?

## IV.—*Acceptation.*

10. Le porteur doit-il, en principe, être libre de requérir ou de ne pas requérir l'acceptation?

Doit-on pouvoir stipuler dans la lettre de change—

Soit que la présentation à l'acceptation est prohibée?

Soit que la présentation à l'acceptation est obligatoire?

Doit-on pouvoir stipuler dans la lettre de change—

Soit que la présentation à l'acceptation est prohibée.

Soit que la présentation à l'acceptation est obligatoire?

Obligation du porteur de présenter la lettre de change au tire—

(a) Quand elle est payable dans un autre endroit que le domicile du tiré (indication de domicile).

(b) Quand elle est tirée à vue ou à un certain délai de vue?

11. Quelles doivent être les dispositions de la loi à l'égard de—

(a) La forme de l'acceptation (acceptation par acte séparé)?

(b) Son caractère et ses effets?

(c) Le tiré doit-il avoir le droit de biffer son acceptation tant qu'il n'est pas dessaisi de la lettre de change ou n'a pas donné connaissance de son acceptation au porteur?

12. Refus d'acceptation et ses conséquences.

(b) The form and language of the drafts?

(c) The rights of the holder of one draft?

(d) In regard to copies?

7. Should the law regulate the documentary draft? (Bill of lading, policy of insurance, etc.)

## II.—*Indorsements.*

8. What should be prescribed with reference to—

(a) The form of indorsement in general?

Should the law recognize several forms of indorsement with different effects as to—

Transmission?

Guarantee?

(b) Indorsement in bank?

(c) Indorsement by power of attorney?

(d) Indorsement subsequent to maturity.

## III.—*Cover.*

9. Should the law contain provisions relative to the obligation of the drawer to provide cover and relative to the consequences resulting from fulfillment or default in this obligation?

## IV.—*Acceptances.*

10. Should the holder, as a matter of principle, be free to demand or not to demand indorsements?

Should the power be given to stipulate in the bill of exchange—

That presentment for acceptance is prohibited?

Or that presentment for acceptance is obligatory?

Obligation of the bearer to present the bill of exchange to the drawee—

(a) When it is payable in another place than the domicile of the drawee (indication of the domicile).

(b) When it is drawn at sight or at so many days sight.

11. What should the provisions of the law be with regard to—

(a) The form of acceptance (acceptance by separate document)?

(b) Its character and its effects?

(c) Should the drawee have the right to cancel his acceptance so long as he has not delivered the bill of exchange or has not given notice of his acceptance to the holder?

12. Refusal to accept and its consequences.

(a) Dans quels cas y a-t-il refus d'acceptation?

(b) Contre qui le porteur peut-il exercer le recours?

(c) Ceux contre qui le recours est exercé doivent-ils avoir le choix entre la caution et le remboursement? ou bien:

Le porteur doit-il avoir le droit de demander le remboursement?

13. La loi doit-elle accorder des droits spéciaux au porteur d'une lettre de change en cas de faillite de l'accepteur? (ou du tiré?)

14. Acceptation par intervention.

Quand peut-elle être faite?

Par qui?

Dans quelle forme?

Avec quels effets?

#### V.—*Aval*.

15. (a) La loi doit-elle reconnaître l'aval?

(b) En ce cas, que doit-elle prescrire quant à—

La forme.

L'effet de l'aval?

#### VI.—*Echéance*.

16. (a) Quelles doivent-être les dispositions de la loi par rapport à l'exigibilité des lettres de change payables—

1°. À jour fixe (en foire)?

2°. À un certain délai de date (usances)?

3°. À vue?

4°. À un certain délai de vue?

#### VII.—*Paiement*.

17. (a) Quand le paiement doit-il être demandé et effectué?

(b) Le porteur peut-il être contraint à recevoir le paiement avant l'échéance?

(c) Quelles règles doivent-être posées par la loi à l'égard de la validité du paiement—

Avant l'échéance?

À l'échéance?

(d) Doit-on admettre qu'à moins d'une stipulation contraire dans la lettre de change, le paiement doit se faire en monnaie ou en billets ayant cours légal au lieu du paiement?

La loi doit-elle statuer à quel cours (à défaut d'une stipulation spéciale dans la lettre de change) la valeur de la lettre de change sera calculée, si elle contient l'indication du montant dans une autre monnaie que celle du lieu du paiement?

(e) La loi doit-elle s'occuper du paiement partiel de la lettre de change, soit en le permettant, soit en le défendant?

(a) What constitutes refusal to accept?

(b) Against whom should the holder have recourse?

(c) Should those against whom recourse is exercised have the choice between giving bond and direct payment? or rather:

Should the bearer have the right to demand direct payment?

13. Should the law accord special rights to the holder of a bill of exchange in case of the failure of the acceptor? (or of the drawee?)

14. Acceptance by intervention.

(a) When should it be permitted?

(b) By whom?

(c) In what form?

(d) With what effects?

#### V.—*Guaranty by third party*.

15. (a) Should the law recognize guaranty?

(b) In such a case what should be prescribed in regard to—

The form of the guaranty?

The effect of the guaranty?

#### VI.—*Maturity*.

16. What should be the provisions of the law with reference to the requirements of bills of exchange payable—

(a) At a fixed day (at a fair)?

(b) After a certain time from a given date (usances)?

(c) At sight?

(d) At a certain time after sight?

#### VII.—*Payment*.

17. (a) When should payment be demanded? When effected?

(b) Should the holder be compelled to receive payment before maturity?

(c) What rules should be established by the law with regard to validity of payment—

Before maturity?

At maturity?

(d) Should it be admitted that, except for a contrary stipulation in the bill of change, payment may be made in money or in bank notes having legal circulation at the place of payment?

Should the law stipulate at what rate (in default of a special stipulation in the bill of exchange) the value of the bill should be calculated if it contains the indication of an amount in a different money from that of the place of payment?

(e) Should the law concern itself with partial payment of a bill of exchange, either by permitting or forbidding it?

VIII.—*Paiement par intervention.*

18. (a) Par qui et pour qui le paiement par intervention peut-il être fait?

(b) Forme du paiement par intervention.

(c) Effets du paiement par intervention.

IX.—*Recours du porteur.*

19. (a) Quelles formalités doivent-êtré remplies par le porteur comme condition du droit de recours?

(b) Le défaut de paiement doit-il être notifié aux obligés (endosseurs, tireurs) et dans quel délai?

20. Quel est l'objet du recours?

21. Le porteur, qui veut exercer le recours, est-il obligé d'observer l'ordre dans lequel les divers obligés solidaires ont signé la lettre de change, en commençant par le dernier endosseur, etc.?

22. Quelles sont les règles à poser par rapport aux déchéances—

(a) Vis-à-vis du tireur?

(b) Vis-à-vis des endosseurs?

X.—*Perte d'une lettre de change.*

23. Suffit-il que la loi contienne des dispositions à l'effet d'accorder à celui qui a perdu une lettre de change (acceptée non-acceptée)—le droit—

Soit de réclamer le paiement, en donnant caution?

Soit de réclamer un autre exemplaire?

Ou bien—

24. Doit-on introduire la procédure d'amortissement (Amortisations-Verfahren)?

25. Quelle doit être, dans chacun de ces cas, la situation du porteur de la lettre de change, qui justifie de sa propriété par une série d'endossements descendant jusqu'à lui?

XI.—*Vices de forme—Supposition.*

26. Quelles dispositions la loi doit-elle contenir par rapport aux omissions et autres vices de forme?

27. Y a-t-il lieu de régler l'effet de suppositions, même si la condition de la "remise de place en place" est supprimée?

VIII.—*Payment by intervention.*

18. (a) By whom and from whom should payment by intervention be permitted?

(b) Form of payment by intervention.

(c) Effect of payment by intervention.

IX.—*Recourse of holder.*

19. (a) What formalities should be fulfilled by the holder as the condition of the right of recourse?

(b) Should notice of default in payment be given to the obligees (indorsers and drawers), and within what period of delay?

20. What is the object of recourse?

21. Is the holder who wishes to exercise recourse compelled to observe the order in which the different individual obligees jointly liable have signed the bill of exchange, commencing with the last indorser, etc.?

22. What are the rules to be established with reference to defaults—

(a) In regard to the drawer?

(b) In regard to indorsers?

X.—*Loss of a bill of exchange.*

23. Is it sufficient for the law to contain provisions for the purpose of granting to the loser of a bill of exchange (accepted or nonaccepted) the right—

To demand payment by giving a bond?

Or to demand a duplicate?

Or rather—

24. Should the process of Amortisations-Verfahren be established?

25. In either of these cases what should be the position of the holder of the bill of exchange who proves his ownership by a series of indorsements descending to himself?

XI.—*Defects of form—Substitutions.*

26. What provisions should the law contain with reference to omissions and other defects of form?

27. Is it necessary to regulate the effect of substitutions, even if the condition of remittance from one place to another is suppressed?

**XII.—Faux.**

28. Quels doivent être les effets du faux quand il s'agit—  
 (a) de la signature du tireur, d'un endosseur ou de l'accepteur?  
 (b) de l'altération matérielle du contenu de la lettre de change?

**XIII.—Protêts.**

29. La loi doit-elle régler la forme des protêts y compris—  
 (a) le jour (force majeure), le lieu où ils doivent être dressés; et, en ce cas,  
 (b) Doit-elle admettre ou non les protêts par l'intermédiaire de la poste?

**XIV.—Prescription.**

30. Quel doit être le délai de prescription des actions—  
 (a) Contre l'accepteur?  
 (b) Contre le tireur et les endosseurs?  
 31. Quel doit être le point de départ de ces délais?  
 32. Doit-on accorder à celui, à qui la prescription est opposée, la faculté de déférer aux prétendus débiteurs le serment qu'ils ne doivent plus la somme réclamée?

**B. DU BILLET À ORDRE.**

33. En quoi la forme à prescrire pour les billets à ordre doit-elle être différente de celle qui est prescrite pour les lettres de change?  
 34. Quelles sont les dispositions relatives aux lettres de change qui doivent être également applicables aux billets à ordre?  
 35. Quelles sont les dispositions spéciales qui la loi doit contenir par rapport aux billets à ordre?

**C. DROIT INTERNATIONAL PRIVÉ.**

36. Quelles sont les règles de droit international privé applicables—  
 (a) À la capacité des signataires d'une lettre de change ou d'un billet à ordre?  
 (b) À la forme des obligations contractées par la signature d'une lettre de change ou d'un billet à ordre?  
 (c) Aux formalités à remplir par rapport à une lettre de change ou un billet à ordre pour conserver les droits qui en résultent?  
 (d) À la sanction des prescriptions fiscales?

LA HAYE, Novembre 1908.

**XII.—Forgery.**

28. What should be the effects of forgery when it concerns—  
 (a) the signature of the drawer, an indorser, or the acceptor?  
 (b) The material alteration of the contents of the bill of exchange?

**XIII.—Protests.**

29. Should the law regulate the form of protests, including—  
 (a) The day (force majeure) and the place where they should be drawn; and, in that case,  
 (b) Should protests through the post office be admissible or not?

**XIV.—Limitation.**

30. What should be the time limitation to suits—  
 (a) Against the acceptor?  
 (b) Against the drawer and the indorser?  
 31. From what time should the limitation be calculated?  
 32. Should the party who has lost his recourse owing to the time limit have the right to summon the alleged debtors to court and cause them to swear off their claim?

**B. PROMISSORY NOTES.**

33. In what respect should the form to be prescribed for promissory notes differ from that prescribed for bills of exchange?  
 34. What are the provisions regarding bills of exchange which should be made equally applicable to promissory notes?  
 35. What special provisions should the law contain concerning promissory notes?

**C. PRIVATE INTERNATIONAL LAW.**

36. What are the rules of private international law which are applicable—  
 (a) To the legal rights of the signers of a bill of exchange or a promissory note?  
 (b) To the form of the obligation contracted by the signing of a bill of exchange or a promissory note?  
 (c) To the formalities to be fulfilled with reference to a bill of exchange or a promissory note to protect the rights which result from it?  
 (d) To compliance with revenue regulations?

THE HAGUE, November, 1908,



### **III. PROCEEDINGS OF THE CONFERENCE IN PLENARY SESSION.**

**FIRST SESSION, JUNE 23, 1910.**

President, his excellency Jonkheer de Marees van Swinderen, minister of foreign affairs.

The session was opened at a quarter past 4 o'clock in the hall of the first chamber of the States-General. Those present were:

Germany, Messrs. Simons and Fischel, and Mr. von Flotow, secretary.

United States, Mr. Conant.

Argentine Republic, Mr. Van Gelderen.

Austria, Messrs. Mayer and Hammerschlag.

Hungary, Messrs. Fodor and Sichermann.

Belgium, Messrs. Beernaert, de la Vallée Poussin, and Van der Rest.

Brazil, Mr. de Menezes, and Mr. Duque-Estrada, secretary.

Bulgaria, Mr. Dantschow.

Chile, Messrs. Concha and Yáñez, and Mr. Amunátegui, secretary.

China, Messrs. Kiang Quang and Chung-Hui Wang.

Costa Rica, Mr. de Peralta.

Denmark, Messrs. Grundtvig and Cloos.

Spain, Messrs. de la Rica y Calvo and de Ocaña.

France, Mr. Lyon-Caen, and Messrs. Delvincourt and Alphand, secretaries.

Great Britain, Sir George Buchanan, Sir Mackenzie Chalmers, and Mr. Huth Jackson.

Haiti, Mr. Sylvain.

Italy, Mr. Vivante.

Japan, Messrs. Makino and Nonaka.

Luxemburg, Mr. Würth-Weiler.

Mexico, Mr. Olarte.

Montenegro, the delegates of Russia.

Norway, Messrs. Beichmann and Andersen Aars.

Paraguay, Mr. Ayala.

Holland, Messrs. Asser and Josephus Jitta, and Jonkheer Rendorp, secretary.

Portugal, Mr. Rangel de Sampaio.

Russia, Messrs. Schneider, Nobel, and Granfelt.

Servia, Mr. Radoitchitch.

Siam, Mr. Corragioni d' Orelli.

Sweden, Count Ehrensvärd and Mr. Carlander.

Switzerland, Messrs. Carlin, Kundert, and Wieland.

Turkey, Osman Bey.

There were also present: Their excellencies Messrs. Heemskerk, president of the council and minister of the interior; E. R. H. Regout,



minister of justice; Talma, minister of commerce; L. H. W. Regout, minister of public works; the members of the diplomatic corps present at The Hague; Messrs. Hannema, secretary general of the ministry of foreign affairs; de Vries, secretary general of the ministry of justice and others.

His excellency the minister of foreign affairs made the following address:

**GENTLEMEN:** The hesitation which I feel at the present moment in assuming the honor of addressing these first words of welcome to an assembly so learned and so distinguished will find a strong claim to your indulgence in the fact that this assembly is preparing for the discussion of a question which I feel to be so little within my own sphere. May this lack of confidence in myself on the subject which is to be submitted to you be compensated by the profound conviction with which I feel imbued that this same subject constitutes one of the questions of the greatest importance, the solution of which will contribute to the consolidation of international commercial relations, and which therefore appeals as such to whoever associates the ideal of the future with a unification, more and more extended, of the fundamental rules by which these relations are governed.

The bill of exchange, which fulfills on the international market the indispensable function which the mere coin plays in our minor operations of daily purchase and sale, has so loudly and for so long a time called for careful examination by all those interested that the Government of the Netherlands can only congratulate itself that, thanks to the initiative of the German and Italian Governments, it has become the channel of communication of these reformatory steps before the tribunal of the nations.

And beside this Italian-German initiative, which I can not mention without adding the legitimate tribute of our gratitude, it would be inappropriate to pass over in silence the active part which has been taken by Belgium for at least a quarter of a century in the study of this important branch of international commercial law, of which the records of the commercial congress of Antwerp in 1885 and that of Brussels in 1888 have left us the conclusive proofs. Strong in the support and sympathy of these powers, the Government of the Netherlands has felt that it could adjust the work to be undertaken to the extent of the interests involved only by making appeal to the efficient help of the entire world, which has once before, at the time of the second peace conference, gathered in the residence of our gracious sovereign and thus made of it that sympathetic symbol, so dear to national pride, of the Dutch hedge surrounding and protecting a field of international flowers.

The circular sent for this purpose on the 2d of September, 1908, to the five parts of the world, inviting the powers to participate in a conference on the bill of exchange, had the good fortune to meet with general sympathy, and at the beginning of this year we were able to count upon the participation of 39 States. Guided by the experience on this subject acquired at several other international conferences, the Government of the Queen was of the opinion that the preparatory work would accord a guaranty of ultimate success. It was fortunate in securing the warm cooperation of the royal commission of the Netherlands for international private law, and more particularly, gentlemen—I venture to say it without rendering myself guilty of high treason—especially also of its eminent president, the minister of state, his excellency Mr. Asser, through whose efforts it was possible to distribute to the different powers a Questionnaire, which will form the magic thread of Ariadne in that path which without it might become a labyrinth where the wanderers would end by crying out, "How shall we ever find the way out?"

But with this thread in our hands I do not doubt, gentlemen, that under the well-defined purpose to achieve success, to smooth together a considerable part of the road of international unification, your combined efforts will evolve from the discussions of this assembly a work which, in its practical consequences, it would be difficult to equal. It would be only foolish optimism to deny that there are difficulties, at first sight of serious dimensions, which it will be necessary to overcome, but it would be at the same time to ignore the broad and conciliatory spirit which will preside over your deliberations to despair of a successful outcome. Your presence here, assembled, as you are, from all parts of the globe, is the most striking proof that the Government of the Netherlands has not misunderstood the importance which everyone attaches to the necessity

that the almost elementary guaranties for the normal development of international credit shall be as much as possible developed and consolidated. "Everything changes here below" is the watchword, the reason for our meetings to come. May it be reserved to you to diminish its divergences, to unify the laws and the phases of this social process, and by this general unification to give a new application to the maxim of Alphonse Karr, although taken in a sense slightly different from that given to it by the subtle spirit of that man of letters: "The more it changes, the more it is the same thing."

Gentlemen, in the name of the Government of Her Majesty the Queen, my gracious sovereign, I have the honor, in renewing a most cordial welcome, to declare opened the International Conference for the Unification of the Law of Exchange. [Loud applause.]

His Excellency Mr. Carlin, minister of Switzerland and dean of the diplomatic corps, responded as follows:

GENTLEMEN AND HONORED COLLEAGUES: As delegate of the Swiss Confederation to the International Conference for the Unification of the Law of Exchange, I am at the same time dean of the diplomatic corps accredited to Her Majesty the Queen of the Netherlands. It is in this character that I feel that I ought to take the floor to ask you, gentlemen and colleagues, to proceed, before anything else, to the election of our president. I have the honor to propose to you as such the name of the first delegate of the Government under whose auspices we are assembled here, his excellency the minister of state, Mr. Asser. [Applause.]

The name of Mr. Asser is, gentlemen, our natural choice. You know the universal reputation which he enjoys as one of the most illustrious members of the legal fraternity. You know also all the eminent and enduring honors which he has acquired in the theoretical and practical development of international law.

Mr. Asser has already been president of an entire series of conferences on private international law. We shall have only to congratulate ourselves if he will consent to become our president on this occasion also, and so much the more as during several months his indefatigable labors have been devoted to the preparations for our present conference, which I hope will be a success, with the resulting benefits to the commercial and legal relations of the entire world.

Gentlemen and honored colleagues, I propose to you to declare, unanimously, His Excellency Mr. Asser president of the International Conference for the Unification of the Law of Exchange. [Loud applause.]

The proposition of Mr. Carlin was adopted by acclamation. His excellency the minister of foreign affairs yielded the chair to, Mr. Asser.

Mr. Asser spoke as follows:

GENTLEMEN: It is with a sentiment of profound appreciation that I assume the presidency of this illustrious assembly. I thank, very sincerely, his excellency the dean of the diplomatic corps at The Hague, the minister of Switzerland, for his proposal and for the words, so courteous and much too flattering, which he has addressed to me. I consider it a very great honor to be called to these high functions, and I promise you to do all which is in my power to conduct to a satisfactory result your discussions, which, I do not doubt, will be in more than one respect of a remarkable character.

I appreciate fully the difficulties which it will be necessary for us to surmount, especially the difficult task of the president, and surely I should not have had the courage to assume it if I did not count upon your kindness and upon the vigor of your desire to realize, if it is possible, by our work together, a reform long demanded in the interest of international commerce.

I say, to realize it, if it is possible. But do not think, gentlemen, that I am pessimistic or skeptical with regard to this possibility. On the contrary, I believe that, thanks to the intelligent cooperation of eminent lawyers and distinguished representatives of high finance and of the world of business assembled here as delegates of their governments and representing nearly 40 states, the initiative taken by Germany and Italy will be crowned with success.

Italy had an excellent title for putting herself at the head of this movement. It was in Italy that the bill of exchange was born. The terminology of this instrument of commerce constantly recalls it to us. It was the Italian lawyers,

descendants of Ulpan and Labeo, who, as the writings of Scaccia and others testify, laid the foundations of the law of exchange.

Germany, inspired by the remarkable works of Thöl, d'Einert, and von Liebe, took as the basis of her legislation, already in the middle of the nineteenth century, a new system, which has been adopted by many states in their laws on the bill of exchange. In this system the notion of the formal obligation, independent of agreements concluded and acts done outside the bill of exchange, tends to give to the holder in good faith the greatest security with regard to the existence and extent of his rights.

The Allgemeine Wechselordnung of 1848, justly celebrated as one of the finest monuments of modern legislation, is distinguished especially by the clearness and logical spirit with which its framers have applied their system. But it would be wrong to think that this system rests upon principles entirely opposed to the ancient contract of exchange, as it is found developed in the famous Ordonnance du Commerce of 1673 and in the treatise of the celebrated lawyer Pothier. Already in the ordinance of Louis XIV, as in the Code of Commerce of 1807, we find recognized the absolute right of the holder to what the bill of exchange calls for, independent of the exceptions which the debtor may be able to set up against a previous holder, as well as the absolute obligation of the acceptor to the holder, and still other rules not compatible with the law of contracts of agency, purchase, and sale, and others to which it was sought to subject the bill of exchange.

All this indicates clearly that the lawmakers understood the essence of the obligations arising from a signature affixed upon such a paper, and especially when in France the brilliant school of modern law, which counts among its leaders the two eminent lawyers, delegates of the Republic to this conference, Messrs. Lyon-Caen and Renault, when this modern school has insisted on the necessity of regulating the law of exchange upon a basis more broad and conforming more to the needs of commerce, the French law of 1894 has introduced a reform which I do not doubt will facilitate the agreement which we seek to realize.

It is to be wished—and the world-wide character of our conference sufficiently proves that it is the desire of those who have initiated it—that this agreement shall embrace not only continental Europe, but that it shall include all the States which take part in international commerce and especially those where the bill of exchange is regulated by the Anglo-Saxon law, and which form so large a part of the globe.

Great Britain, it is interesting to note with great satisfaction, is represented at the conference by a delegation which, in the persons of three "representative men," in the best sense of the word, combine in the happiest manner, like many other delegations, diplomacy, jurisprudence, and high finance. These delegates will not refuse to lend their support to those efforts of the conference which tend to remove, as far as possible, the divergencies existing between the English law and that of other countries. We may recall the declaration of the English barons assembled in Parliament toward the middle of the fourteenth century, "*Nolimus leges Angliæ mutari*," but we know that this solemn and proud declaration did not and could not have in view commercial law and especially the law of exchange.

The English nation is distinguished in matters of legislation by a conservative spirit which, in its healthy and natural application, should inspire admiration and respect, since it affords a guarantee against the danger of innovations badly prepared and contrary to national traditions. But considerations of this nature can be applied only in a restricted measure to the law relative to an instrument of commerce which, as has just been suggested to us by his excellency the minister of foreign affairs, is cosmopolitan in its nature and with regard to which legislation shall necessarily take account of the requirements of international trade.

It has been asked if the Government of the United Kingdom would consent, leaving aside the question of form, which may be solved by each State in conformity with its constitution, to the adoption of an international law. It seems to me that, in reference to this question, which I permit myself to propose, but which no one can pretend to resolve at present, there are several circumstances of happy augury. Among these circumstances, the conference will have the advantage of seeing in the midst of its members the learned author of the bills of exchange act of 1882, the Hon. Sir Mackenzie Dalzell Chalmers; who, better than any other delegate, will be able to explain to us wherein the provisions of this law depart from the law of continental Europe.

If he succeeds in securing the adoption by the other powers of some of these provisions, such a result, which will extend still further the territory already so vast where the bill of exchange is regulated by English law, will be worth, it seems to me, the sacrifice in the interest of uniformity of some other rules of secondary importance.

Instead of speaking of the English law, I should have said the Anglo-Saxon law, and should have expressed the satisfaction caused by the reading of the memorandum which the honorable delegate of the United States of America, Mr. Conant, has addressed to the Secretary of State of the great Republic, in reply to our Questionnaire. Unfortunately this memorandum, although there was time to include it in the collection of documents, did not reach us until after a part of the synoptical table which has been distributed to you to-day, had already been printed, so that it was not possible to insert in it the summary of the American responses. I present my excuses for this involuntary omission, not only to the author of this memorandum, but also to the honorable delegates of the Argentine Republic, whose memorandum came to us after that of the United States of America, and could not be inserted in the collection of documents nor included in the synoptical table. It has nevertheless been printed and will be distributed to the members of the conference at the same time as the memorandum of the United States of Brazil, which came to us only after the other two.

You will see, gentlemen, in reading the memorandum sent by the Government of the United States of America, that the honorable delegate brought together in a large number of meetings the leading bankers and merchants, and that 100 copies of the Questionnaire were sent to different commercial cities from which written responses were received. Mr. Conant was able to observe "that there is cordial sympathy among American bankers with what is understood to be the primary object of the conference, to make international bills of exchange more uniform and certain in their provisions and interpretation, and therefore more readily negotiable in the channels of international banking."

It is only since a relatively recent period that international bills of exchange have circulated in America and been accepted by American bankers. The framers of the law called the negotiable instruments law, which governs the law of exchange in almost all of the States of the Union, having aimed only at drafts whose circulation was limited to those States, the bankers and merchants recognized that this law contained provisions which are not in harmony with foreign law, and are disposed to take into consideration modifications of this law and the introduction of supplementary measures destined to remove these differences or causes of conflict. They are equally disposed—I will cite the exact text—"to cooperate in the adoption of general rules for avoiding conflicts of law over international bills and maintaining and enlarging that high character of negotiability which they already possess under the law merchant."

While the great Republic of North America brings us words full of sympathy for the object of the conference, the great Republic of the southern part of the New World, Brazil, presents us with her new law on the bill of exchange, the most recent body of legislation on this subject, since it bears the date of December 31, 1908. This law, while containing innovations in regard to the old Brazilian law, establishes at the same time a greater degree of harmony between this law and the systems of legislation in force in Europe.

I venture to make this observation, that the conference, if it does not wish to render still more difficult what is already sufficiently so—its task of preparing the unification of the law of exchange—ought to guard against introducing innovations into its projects which have not the object of rendering it more acceptable, but which, on the contrary, might prevent a certain number of States from supporting it. When unity of law shall have been attained, the time will have arrived to enter upon the path of reform. Until then the work to be done should consist above all in establishing by means of reciprocal concessions the wisher-for harmony between different legislative systems which must be welded into a single law.

So much for the object of our efforts. As to the method to be followed to attain this end there is a choice between several systems in regard to which the conference will decide.

It will examine the method followed in Germany to give the force of law in all the German States to the Allgemeine Wechselordnung of 1848. It will profit perhaps by the excellent example which has been given by the three



Scandinavian States with the object of unifying their laws on the bill of exchange, which were replaced on the same day in each of those countries by the remarkable law of 1880.

It will compare the system of purely legislative methods for unification by means of international conventions. It will take into consideration the procedure adopted with success in 1890 by a great number of States to establish a uniform law relative to the transportation of merchandise by railway. It will recall that the conventions on private international law concluded in 1896, 1902, and 1905, had given to the signatory States a uniform system of legislation relative to the solution of conflicts of civil law, and will be struck especially by the fact that the modification of these conventions with the object of filling the gaps indicated by experience, or of introducing innovations considered useful, has been accomplished without too much difficulty by means of new conventions prepared by conferences. The convention of 1890 relative to the transportation of merchandise by railway has even prescribed the periodical reassembling of conferences for this purpose.

Whatever may be the method to be followed, we shall have in any case the advantage of being able to profit largely by what others have done before us. His excellency the minister of foreign affairs has already recalled with appreciation the interesting discussions of the congresses of Antwerp and of Brussels, assembled by the Belgian Government in 1885 and 1888. We shall not fail to consult the advance draft which was the result of these discussions. The commission named by the Belgian Government to prepare the response to our Questionnaire, and which has worked under the presidency of his excellency M. Beernaert, our nestor and our guide, has indorsed in its memorandum the text of this draft.

The commission has recalled that before these congresses in Belgium the institute of international law had already taken up the uniformity of the law of exchange in its sessions of 1863 and 1873. May it be permitted me to observe that in 1863 the institute did not yet exist. It was the International Association for the Progress of Social Sciences which discussed this question in 1863 at its session at Ghent. The question was put on the order of the day upon the proposition of a young Dutch member, who was not then able to foresee that nearly a half century later he would have the honor to preside over this world-wide conference.

In 1885 the institute of international law adopted a project for a uniform law on the bill of exchange. Since the congress of Brussels, in 1888, there has been insistence many times in meetings of lawyers as well as in those of chambers of commerce on the necessity of realizing the desired unification. His excellency Baron Guillaume, minister of Belgium, then at The Hague, but now in Paris, rendered a great service to the conference in publishing in the *Revue de l'Institut de Droit Comparé* (1909, pp. 394-498) a very complete bibliography relative to the bill of exchange.

Finally, in 1905, the Corporation of Deans of Merchants of Berlin (*Aeltesten der Kaufmannschaft*), convinced of the value of this unification, adopted a resolution which has had excellent results. It charged a distinguished jurist, Dr. Felix Meyer, councillor of the court of justice at Berlin, to prepare a work on comparative legislation on the bill of exchange and to follow it by a project for a uniform law. We all know that Dr. Meyer has acquitted himself of this task in a manner truly masterly. His work, which is in the hands of all the delegates, has a great scientific value and will also facilitate the work of the conference. I feel that I fulfill a duty in expressing equally to the Corporation of Deans of Merchants of Berlin and to Dr. Meyer my sincere thanks for the great services rendered by them to the cause of the unification of the law of exchange.

That cause I do not doubt will one day triumph. It can not be predicted whether it will be the immediate result of our conference or if this triumph will be achieved only at a more distant epoch. We all know, as I said in the beginning, that we have obstacles to surmount of various natures, but these obstacles will not have the power to discourage us. They will stimulate our zeal, for, gentlemen, you know that "To conquer without peril is to triumph without glory."

Finally, gentlemen, to conclude. It is on behalf of Germany and Italy that the Netherlands have drawn a bill of exchange upon your legal knowledge, your experience of affairs, your good will, and your spirit of conciliation. That bill of exchange you have accepted by coming here from almost all parts of

the world—from the most distant countries of Europe, from young Turkey, whom we greet with enthusiasm; from the countries of southern America, from the countries of the Far East, and from Japan, China, and Siam.

In spite of the great diversity between the laws of the different States on the bill of exchange, there is one rule which they all sanction—a rule everywhere recognized—"He who accepts must pay!" [Loud applause.]

The president announced that several delegates had requested him to make their excuses to the conference. Messrs. Kriege (Germany) and Louis Renault (France) were detained for some days at Paris for the conference on aerial navigation. His Excellency Baron Guillaume (Belgium) and Mr. Nagy (Hungary) were prevented by the duties of their positions from coming to The Hague. Mr. Rahusen (the Netherlands) was ill.

Mr. Asser read the following telegram which he had received from the International Congress of Chambers of Commerce and Commercial and Industrial Associations assembled at London:

The Fourth International Congress of Chambers of Commerce and Commercial and Industrial Associations, assembled to-day at London, recalling and renewing its resolution at Prague, as the result of which the Netherlands Government kindly consented to invite the governments to an international conference, addresses to the diplomatic conference on the international bill of exchange the expression of its sentiments of profound sympathy, with the warmest wishes for the final success of its important deliberations. In the name of the congress: The president, Canon Legrand; the secretary general, Emile Jottrand.

The president proposed to the conference to answer this address by a telegram of thanks, which was agreed to. The nomination of the administrative force of the conference was then taken up.

Mr. Asser said he believed that he was the interpreter of the will of the gathering in requesting their excellencies, the ministers of foreign affairs, of justice, and of commerce to serve as honorary presidents. He proposed also to offer this dignity to his excellency the dean of the diplomatic corps, the minister of Switzerland, and to other ministers accredited to Her Majesty the Queen who were delegates to the conference—the ministers of Spain, of Great Britain, of Mexico, and of Sweden.

This was unanimously agreed to.

The office of the secretary was made up as follows:

Secretary general, Baron D. W. van Heeckeren, director at the ministry of foreign affairs.

Secretary general on style, Mr. P. Delvincourt, secretary of embassy of the first class, of France.

Secretaries: Mr. Alphand, vice consul of the first class, deputy chief of bureau at the ministry of foreign affairs, at Paris; Mr. G. Catalani, secretary of legation of the first class, of Italy; Dr. Gaus, attaché at department of foreign affairs, at Berlin; Mr. F. Donker Curtius.

Assistant secretaries: Jonkheer H. van Asch van Wijck, Mr. H. H. T. Goeman Borgesius, Jonkheer L. Bosch Chevalier de Rosenthal, Mr. A. S. Oppenheim, Mr. A. B. G. M. van Rijckevorsel.

His Excellency Mr. Carlin made the following proposition:

MR. PRESIDENT AND GENTLEMEN: Now that our conference has definitely constituted its administrative force, I have the honor to ask of you to request it to address, in the name of the conference, a telegram of homage and of respect to Her Majesty the Queen of the Netherlands, the august sovereign of the country

which once more offers its gracious and generous hospitality for an international assembly. There may be perhaps occasion to add in this telegram the condolences of the conference on account of the mourning which has stricken Her Majesty the Queen and the royal family.

This received unanimous approbation and the president thanked Mr. Carlin warmly for his initiative.

Mr. Asser made several suggestions concerning the order and method which it would be convenient to adopt for the work of the conference. The questions submitted for its examination, he declared, were intimately linked with each other and it would be difficult to separate them and to send them to different committees. One of them alone might, without doubt, be made the object of a special study—that relative to problems of international private law in the matter of exchange. A special committee would accordingly be constituted on this subject. For the rest, it would be desirable that in the plenary sittings, which, at the beginning, would be held in the morning, the conference should proceed with a general discussion, in a manner to disclose the points on which divergences of views might manifest themselves. Afterwards the conference would be divided into five sections, each of which would discuss the questions which the conference might prescribe in plenary session.

Finally, the five chairmen and the five rapporteurs of the sections, as well as the president and the rapporteur of the committee on international private law and the president of the conference, would come together in a central committee to frame a project of agreement and to prepare the text of the convention or of the uniform law to be submitted to the conference. This method of procedure seemed of a nature to avoid any loss of time and to permit the assembly to arrive promptly at the object which it sought.

The conference adopted this proposition, and decided that after the general discussion it would pronounce on the composition of the sections and of the committee on international private law.

The president remarked that for the general discussion, the conference might, in the main, follow the order adopted in the Questionnaire of the Netherlands Government. It seemed, however, that an exception ought to be made in regard to the first three articles. The first related to the opportunity of a discussion on the law concerning the check. The conference would prefer, without doubt, to proceed now with the discussion of the bill of exchange and to reserve the possibility of taking up the check later. The other two related to the basis of the discussion itself. One put the question whether the conference ought to regulate in a complete manner the law of exchange or to establish only the principles; the other asked if it ought to settle conflicts of law. The president thought it preferable not to answer these questions until after the general discussion.

This was agreed to. No further observation being presented, the conference adopted this method of work. The next sitting was fixed for the morrow, at 10 a. m., for the beginning of the general discussion.

The sitting closed at 6 o'clock.



SECOND SESSION, JUNE 24, 1910.

President, Mr. Asser.

The sitting was opened at 10.15 a. m.

The president suggested adding to the office of the secretary Edhem Bey, secretary of the Turkish legation. He informed the conference that the proceedings of this sitting would be promptly distributed, and begged the delegates to return the copies corrected, if correction was required, to the bureau of the secretary with the least possible delay.

As he had announced the previous day, the president proposed to follow in the discussion the order fixed in the Questionnaire. He invited the conference to discuss summarily the articles of the Questionnaire. The opinions which might be expressed would not bind either the Governments nor their delegates. The object of the debate would be merely to invite an exchange of views.

The president remarked also that the Questionnaire did not exhaust the entire subject. Several Governments had already indicated certain problems which were not mentioned in the Questionnaire. It went without saying that they would be proper subjects of discussion by the conference.

Only half of the States having responded to the Questionnaire, the conference would be pleased if the Powers whose responses had not reached the secretary would now make known their opinions.

In conformity with the decision reached on the day before, the president proposed to begin the examination of the Questionnaire, reserving the first and second questions. As the third had been referred to the committee on private international law, they were confronted at once with question 4, paragraph (a).

Question 4. Should the law require: (a) Designation as a bill of exchange?

The conference finds three systems in operation—one which requires the designation "bill of exchange;" another which does not require it. By way of compromise, Switzerland proposed a third solution, which, without wishing to exercise the least influence over the conference, the president considered as extremely ingenious.

Mr. Van der Rest made the following declaration:

The delegates of Belgium respectfully insist that designation as a "bill of exchange" shall not be obligatory.

It would be a complete innovation in their country, where such a designation is not used, as it would be in several other countries, and not the least important from the commercial point of view. Legally, this obligation is not justified. A document should, according to the ordinary principles of law, be interpreted according to the nature of its provisions and in no wise by the name which it pleased the parties to give it. If an instrument bore the designation "bill of exchange," and did present the conditions required to make it one in reality, such an instrument would not be from this fact any more regular.

The principal end sought to be attained was to prevent persons not conversant with rules of law from signing an instrument while misunderstanding the scope of their obligation. But many other circumstances might present themselves where, on the contrary, error would be encouraged by the designation "bill of exchange." The words

"bill of exchange," although universally admitted to designate instruments of commerce (they are employed even to designate our conference), are not, however, always rigorously exact. Thus, no operation of exchange, properly so called, takes place when an instrument of commerce is a simple instrument of credit or a means of obtaining payment.

Why then require, under penalty of invalidity, a designation sometimes inappropriate in its very terms? For a formality nonessential in itself to be rendered obligatory under penalty of invalidity it ought to respond to some real use and to present serious advantages. Is this the case with the designation "bill of exchange"? Has practice disclosed, in the States where it is not required, grave inconveniences which are not observed in other States? We do not think so. In so far as Belgium is concerned in particular, where this designation is entirely unused, these inconveniences have not appeared. The motive of usefulness, which alone would justify compulsion, according to our view, does not exist.

In 1885 the congress of Antwerp, and in 1888 the congress of Brussels, rejected the requirement of the designation "bill of exchange." The Belgian delegates expressed the wish that these decisions shall be maintained at the conference of 1910.

Mr. de la Rica y Calvo brought to the attention of the conference that the response of his Government, with a French translation, would be immediately transmitted to the secretary. He would make forthwith some reservations against provisions which did not conform to his national legislation.

Mr. Sylvain expressed his regret at not having had the time to respond to the Questionnaire. He ought, therefore, to make known the opinion of his Government. It was in harmony with that of Belgium, that the designation "bill of exchange" ought not to be obligatory. It was not required in Haiti, but was permissible there, as well as other designations having the same object. A formality should not modify the nature and effect of an obligation. Without doubt the proposition of Switzerland was ingenious, but there was need that it be explained. He had understood it to involve obligatory mention in the document itself in certain cases only. If this was so, the proposition appeared to him ingenious, but on that account perhaps too complicated for realization.

Mr. de Menezes, as the response of Brazil, although presented to the secretary, had not yet been distributed, thought proper to declare that under the Brazilian law the designation "bill of exchange," in the language in which the instrument was issued, was essential for the existence of the bill. This declaration was indispensable in order that one might know immediately the nature of the responsibilities connected with the signature which one affixed to a document.

Mr. Carlin did not see any theoretical objection to the Haitian conception. The work of the conference was not one of theory, but to seek the reconciliation of different systems. It seemed to him that the Swiss proposition might be acceptable at once to the partisans of the theory of formalism and to those of the English system, which extends even to the suppression of the clause "to order." It was a proposition of conciliation, inspired by considerations of a practical order, and which evidently offered real advantages.

Mr. Vivante declared that Italy would renounce uniformity of legislation sooner than she would renounce the formal designation. Documents to order went on multiplying. A distinctive character, attached exclusively to the bill of exchange, was therefore indispensable in order that the public might recognize it. Conciliation on this question was not possible, especially on the part of a country of high culture, where documents to order abounded. The special character of the bill of exchange ought to consist in an expression which would give notice to the holders of the title of the gravity of the engagements which they contracted. The bill of exchange has results peculiarly important, notably in regard to methods of execution.

Mr. Fodor made the following declaration:

We can not accept the proposition of Switzerland that, in place of the designation "bill of exchange," it may be prescribed that the instrument shall be issued "to order." Thus considered, the argument maintained in favor of liberty of forms would reduce itself to a question of words, since finally the designation "bill of exchange" would be replaced by the words "to order," which would be the distinctive mark of the bill of exchange. There is no reason for giving the preference to this provision rather than to the formality of the designation of the document. It would be better that the designation should exist and that things should be called by their right names, which would indicate precisely the legal character of the document and suffice to render it certain.

With the system of designation there is no need of the clause "to order," which is implied. The instrument is susceptible in itself of being indorsed, while if the qualification is omitted and it contains no clause to order it can not circulate. Another disagreeable consequence would arise from this solution. It would no longer be possible to create a bill of exchange and to prohibit the circulation by the words "not negotiable," as is permitted by many recent international laws. If it is desired to admit the bill of exchange with the restrictive clause "not to order," it is indispensable to prescribe the condition of designation for the bill of exchange.

Mr. Mayer declared that he could not renounce the formal designation "bill of exchange."

Mr. Jitta set forth the importance of the question. It would be possible to obtain a result only by mutual concessions. Personally, he considered that the two systems had a sound point of departure. It was necessary to arrive at an intermediary system in the nature of the Swiss proposition. He recalled that even in Italy many foreign bills of exchange circulated which did not bear the heading "bill of exchange," of which Mr. Vivante made himself the champion, and without causing, at least in his opinion, any difficulties. The Swiss solution would only recognize an existing situation. In order to obtain such a result reference to the sections seemed to be necessary, and it was this which he proposed to the conference.

Mr. Simons acknowledged that in international commercial practice the designation had not shown itself to be indispensable. But Germany was not able to renounce it. She wished its maintenance to distinguish the bill of exchange from the order of payment in use for commercial needs (*kaufmannische anweisung*) and from the check. The clause to order would not suffice to accomplish this result, for, contrary to the usage in France and Great Britain, Germany made use in the bill of exchange of the *Rekta-Klausel*.

The president remarked that the objection seemed to be well founded at first blush, but that when it was examined more closely it was found to have less value. If the Swiss system was adopted,

it was evident that the provisions relative to indorsement must be brought into harmony with those which concerned the designation as a bill of exchange. In the countries which did not require this designation the bill of exchange would be capable of indorsement only if it was drawn to order.

Mr. Schneider believed that the law should require the designation "bill of exchange," but the national laws might define the conditions when this designation should not be required.

Mr. Yanez believed that the law ought to require the designation "bill of exchange" in the text of the bill, but that this designation should not be indispensable for the validity of the bill when the instrument contained the clause "to order," in order not to destroy the obligations of a bill of exchange by a simple question of words, when the form of the document sufficed to disclose its character.

Mr. Carlin declared that Switzerland wished to leave to the States the most complete liberty in everything which concerned their national legislation. Personally he desired the maintenance of the designation, but Switzerland did not desire to impose any provision whatever on anyone.

Mr. Radoitchitch asked the maintenance of the designation "bill of exchange."

Mr. Fischel testified to the difficulty of the problem. National customs being fixed in one sense or in the other, it was easy to comprehend that any country would find difficulty in renouncing its system. But the delegates were assembled with the object of finding solutions for an international law. Hence it seemed to him that they ought not at the very outset to renounce the hope of uniting different interests and by discussion to carry conviction in one field or in the other. It seemed to him, however, that it might be laid down as a principle that concessions which did not impair the security of the instrument were the easiest to make. Up to the present time laws on exchange were national laws, and each country had been able to regulate the question within its own domain as it understood it; but if success was attained in establishing a law uniform for all countries it would involve a document par excellence international, whose value would be enhanced if it was regulated by the international law. It was therefore very useful to lay down as a rule that the bill of exchange destined to circulate throughout the entire world should bear the designation "bill of exchange."

In response to the argument of the president, he wished to know how a contradiction could be avoided between the provisions of a uniform law if certain countries adopted the stipulation that a bill of exchange must bear the statement "to order" as essential and at the same time the countries accepted in the uniform law the possibility of excluding the condition to order by the addition of the *Rekta-Klausel*. There appeared to him to be in this an evident contradiction.

The president recalled what he had said on the subject of the harmony which must be established between the provisions relative to indorsement and those which required the designation "bill of exchange." If the Swiss system should be adopted there would be no reason for the *Rekta-Klausel* in the countries which did not require the denomination "bill of exchange," since, according to the

law of these countries, the bill of exchange would be indorsable only if it contained the clause "to order."

Mr. Sylvain believed it was possible to obtain unanimity on the necessity of a distinctive character for the bill of exchange destined to attract the attention of everyone. Disagreement began when it came to defining what this distinctive character was to be. He was pleased that Switzerland had given the reasons for her proposition, and he was able to say that he was now in a position to support such a text or at least a proposition inspired by the same considerations. What was important was a distinctive character for the bill of exchange; the external form of this character was secondary.

Mr. Beichmann indorsed the words uttered by the president at the beginning of the sitting on the object of the conference. Personally he was a partisan of the maintenance of the designation "Bill of exchange," but with the purpose of conciliation, he was ready to give his adhesion to the Swiss proposition, provided, however, that his point of view did not encounter too serious an opposition.

Mr. Yànez supported the Swiss proposition. It was necessary to avoid a setback for the conference on a question of words.

Mr. van Gelderen declared that after having heard the delegates of Germany, Italy, and Switzerland, he asked the reference to the question to a section.

Mr. Lyon-Caen recalled that France, in her response to the Questionnaire, without giving her reasons, had furnished the solution which was under discussion. A single remark suggested itself at the beginning. Where the system of a formal designation was required, the business community had accommodated itself very well to it; it was the same in the countries where such a designation existed without being required, as in France. What distinguished there the bill of exchange from the cheque was the reference to "value received." Finally, the last system—the Anglo-Saxon system, which has every preference in France, if her legislation is to be modified—has also entered into business usage. It was everywhere satisfactory. Hence the conclusion that everywhere, under whatever form it presented itself, the bill of exchange could be distinguished from other commercial documents. In France it was easy to recognize the character of a bill of exchange issued in England, and he had never heard that the circulation of such a document had caused difficulties in Germany. If, then, the governments must make a sacrifice, it must be to attain uniformity of legislation in the broadest sense.

The French establishments of credit which had been consulted had pronounced for the system which was the most liberal—that of Great Britain. It should not be forgotten that the penalties which are imposed by a system of formalism, and which involve the nullity of the instrument for simple errors, are due most often to the very excusable ignorance of the interested parties. At Antwerp in 1885 they had been inspired with this idea—not to require arbitrary particulars, which were harmful and useless, and thus the English system had all the sympathies of the French delegation.

The Swiss proposition was ingenious and he rendered homage to the sentiment which had inspired it, but he had doubts in regard to its efficacy. By the exception which it tolerated uniformity would not be obtained. As to the system of formalism requiring the desig-



nation as a bill of exchange, it would overthrow existing customs in France. Without doubt the expression was sanctioned by the code of commerce, but the public employed the expression, "drafts" (traites). It was necessary in any case to offer the choice between these two expressions.

Mr. Fischel desired only to reply to the direct question put by Mr. Lyon-Caen. It was the result of his personal experience that the absence of the formal designation (as was the case in English bills of exchange) often caused difficulties when documents of this nature were sent to Germany. They were often refused, especially when they were drawn on small places, where difficulties were feared in respect to drawing protests. It was true that the manner in which the question was to be regulated by the article on conflicts of law would remove every difficulty, but practice did not always yield to the requirements of theory. Without wishing to exaggerate these difficulties, the speaker felt obliged to mention them.

Mr. Beernaert considered the question of minor importance. The congress of Antwerp had pronounced in favor of the English system. The difficulties were, however, of a nature to require consideration in committee.

The president supported this view of the subject.

Sir George Buchanan read the following declaration:

In responding to the invitation addressed to them by the Government of the Netherlands, His Majesty's Government have been animated by the desire to collaborate with the other governments represented at the conference, in order to remove within such limits as is possible the obstacles which have from time to time fettered the progress of international commerce by reason of the diversity of legislation on bills of exchange. The British delegation feel it to be their duty, nevertheless, to indicate the difficulties which, from the point of view of His Majesty's Government, stand in the way of the elaboration of a project for a uniform law. In the first place, the law actually in force in the United Kingdom is almost identical in regard to the principal questions of the law of exchange with the laws which have been adopted by the majority of our colonies and by the Indian Empire, as also by the majority of the States of the United States. To accept modifications in regard to rules, as to which there already exists complete harmony throughout the whole British Empire, if not in every country where the English language prevails, would be to impair this almost perfect uniformity, which is for us of supreme importance, and to expose us to the danger of widening, instead of narrowing, the diversity between the legislation of the colonies and that of the mother country. Moreover, in the United Kingdom commercial law forms an integral part of the common law; the law makes no distinction between traders and those who are not traders. Consequently, special tribunals of commerce do not exist and disputes which may arise on the subject of a bill of exchange are determined by the ordinary tribunals.

As to the rules in which the provisions of the English law are not yet very precise or are not entirely in harmony with the provisions of colonial laws, His Majesty's Government will be disposed to take into consideration proposals tending to lead to a simplification of the law of exchange. The British delegation will be anxious to give all the enlightenment which the conference may desire on the subject of the laws which govern bills of exchange in the United Kingdom, in the colonies, and in the other oversea dominions. They will not fail to examine carefully all the proposals which the delegates of other powers think fit to present to the conference, in the hope of being able to submit to His Majesty's Government recommendations based upon such proposals within the limits already set forth above. If, on the one hand, His Majesty's Government found themselves able to accept modifications of certain English rules, and if, on the other hand, the examination of the laws in force in the United Kingdom and in its colonies on bills of exchange were to dispose some of the powers to adhere to the principles which form the basis of those laws, there



would result, at least in practice, a uniform regulation of certain questions of the law of exchange.

In the conviction that no project for a uniform law would command anything approaching a unanimous vote, the British delegation believe that the conference should restrict itself to defining the ground where the diverse views may be made to harmonize and thus to lay down the principles of the law of exchange without seeking to regulate its details.

Sir Mackenzie Chalmers said that in England it would be very difficult to accept the principle that a bill of exchange must bear the designation "bill of exchange." There was a single principle which governed the entire law and jurisprudence of England concerning contracts. Only the subject matter was looked to; all formalities are disregarded. There was still another difficulty. In England the check was a bill of exchange, and innumerable checks bore neither the designation "check" nor "bill of exchange."

Count Ehrensvärd wished to preserve the system in force in Sweden, without wishing to force it upon anyone else. But if the desired uniformity was to be attained it was necessary to adopt an intermediate proposal, like the proposition of Switzerland. He was quite disposed to set the example. Without doubt absolute uniformity would not be obtained by this course, but a great step would have been taken in the right path.

The inconveniences inherent in each of the systems would continue to subsist, but it could not be expected to attain perfection at the first stroke. It would be necessary to be content with modest results, and would it not be a great result if agreement could be attained on the other points of the program? Sweden belonged to the formalist group, but she would not examine with less consideration any intermediate proposal.

The president, in closing the discussion, endeavored to define the scope of the Swiss proposition. At the same time he sought only to put the question, reserving the right to return to it in committee.

The conference sent to the sections the study of question 4 (a).

The president submitted for discussion question 4 (b) and noted that all the powers, except Bolivia, which was not represented, had answered in the negative. He proposed to adopt this resolution, which was agreed to, and to extend it also to question 4 (c), on which the responses to the Questionnaire were unanimous, except for Bolivia. This was agreed to.

The president passed then to question 5 (a):

Should the law permit the issue of a bill of exchange to bearer?

Mr. Carlin drew attention to a fault of printing in the Questionnaire. Switzerland had answered "yes," while the résumé—of which he was happy to be able to comment upon the great clearness and legal precision—gave the response as "no."

Count Ehrensvärd made a declaration of the same character. Sweden was put down as having answered "yes," while her response was "no."

The president declared that due note would be taken by the secretary of these corrections.

Mr. De la Rica y Calvo declared that the internal legislation of his country was opposed to the issue of a bill of exchange to bearer.

Mr. de Ocana said that, although the Spanish code did not authorize the issue of bills of exchange to bearer, it provided that indorse-

ment in blank transmitted the ownership of the bill and that indorsement without date was considered only as a simple authorization for the recovery of the amount.

Mr. de Menezes said that the Brazilian law permitted the creation of a bill to bearer.

Mr. Radoitchitch declared that Servia could not accept the bill of exchange to bearer.

The president asked if Servia did not permit indorsement in blank, which transformed the bill into an instrument to bearer. In this case, there would be no occasion to prohibit the bill of exchange to bearer.

Mr. Dantschow declared that in Bulgaria the bill of exchange to bearer was unknown, but she was mild in her opposition to the creation of such a bill of exchange, because Bulgaria permitted indorsement in blank and the check to bearer. In the interest of the unification of the law of exchange, the Bulgarian Government was not against the creation of a bill of exchange to bearer, in conformity with the vote given by the law association at the session of Budapest, in 1908. (Rule 7.)

Mr. Vivante was opposed to the issue of the bill to bearer. There were not only historical reasons which were opposed to it, but mainly arguments of a practical character. The number of signatures is evidence of the soundness of the bill. By the issue of the bill to bearer it is too easy for the holder of the bill to escape the obligation of establishing his identity, and the loss of the instrument also becomes more dangerous.

If the distinctive character of the bill of exchange were suppressed by suppressing the formal designation of "bill of exchange," and if the bill of exchange to bearer were permitted, one would arrive at a general category of instruments of credit. The bill of exchange would disappear by the fact of the suppression of all its constituent elements. Further, to better determine this question, this point should be explained: It is impossible that the same bill should circulate as an instrument to bearer and as an instrument to order, for the possessor would be able to change the scope of the obligations of the drawer. If it were desired that the bill circulate either in one form or in the other exclusively, these points might be reconciled.

The president inquired if Italy, nevertheless, had not pronounced in favor of the issue of bills to order of the drawer and indorsable in blank.

Mr. Vivante replied that the bill of exchange circulates with at least the name of the drawer and of the first holder—signatures which fortify the credit of the bill.

The president remarked that in Italy indorsement in blank was allowed. There was a certain inconsistency in refusing the issue of the bill to bearer. It was objected by the distinguished delegate of Italy that the credit of the bill was weakened; but if the first taker was content with the signature of the drawer alone, why should he be opposed? Was there a reason of public policy involved?

Mr. Hammerschlag said that Austria did not feel the need of issuing this sort of bills. He wished to know if the usage was widely operative elsewhere. He asked the delegates of Great Britain to inform the conference of the use made of them by the English public.

Sir Mackenzie Chalmers replied that the use of the bill to bearer

had existed in England for more than 150 years and had caused no difficulty. It was necessary to add, which was of some importance, that promissory notes to order are often made to bearer and that checks, which were considered bills of exchange, were very often made to bearer.

Mr. Yanez declared that Chile was opposed to the creation of these bills.

Mr. Beernaert declared that Belgium answered affirmatively the question proposed. It had been brilliantly discussed at Antwerp, where the discussion had been concluded in the sense which he advocated, by 27 votes against 25; but, thanks to an amendment tending to authorize the indorsement to order of a bill of exchange to bearer, unanimity had finally been obtained.

Mr. Jitta set forth that the question was connected with that of deciding whether the designation "bill of exchange" might be replaced by the phrase "to order." If the bill could be made to bearer it would be necessary either to prescribe absolutely that in this case it should bear the designation "bill of exchange," or else to say that the clause "to bearer" sufficed, like the clause "to order," to make an instrument a bill of exchange.

Mr. Hammerschlag remarked that in Austria the check was submitted to a special system. Hence it would not be included under international regulations.

The president proposed to refer the subject to the sections, which was agreed to.

He communicated to the conference the following dispatch, which he had just received from Her Majesty the Queen of the Netherlands, in response to that which the conference had had the honor to address to her.

HET LOO.

I am happy to see the World Conference for the Unification of the Law of Exchange assembled at The Hague, and I cordially give to the conference the assurance of the keen interest which I take in its work. I beg your excellency to transmit to the conference my sincere thanks for the expression of its sympathy with the loss which I have just suffered.

WILHELMINA.

The president then read questions 5 (*d*) and 5 (*e*).

Mr. Simons asked that the consideration of these question be adjourned until the consideration was reached of questions 14 and 18.

The president consulted the conference on this proposition, which was adopted.

Question 5. Should the law permit (*f*) the clause "return without costs"?

Mr. Lyon-Caen insisted that there should be a preliminary agree-by it was relieved of legal delays (which was the custom in France), and which he could not renounce. He declared that if in all the countries where the clause was permitted the bearer who benefited by it was relieved of legal delays (which was the custom in France); certain countries went further—as France, for instance, in opposition to Germany—and admitted that if nevertheless a protest had been drawn the costs were considered as frustratory; that is, at the charge of the party who had had the protest drawn. It was a practical question which it was important to elucidate.

Mr. Beernaert supported the observations of Mr. Lyon-Caen.

Mr. Vivante was unable to accept the clause "return without costs," because the effect would be to facilitate the issue of accommodation paper.

Mr. Sylvain supported the view of Mr. Lyon-Caen.

Mr. Fischel said that in Germany the conditions which regulated the clause "return without costs" had existed since 1848 and were considered as practical. He would await the debates in the sections to give the reasons for his view.

The president proposed the reference of the subject to the sections, which was agreed to. He then presented question 5 (g):

Question 5. Should the law permit (g) the clause "without recourse"?

Mr. de Menezes declared that the Brazilian law considered the clause "without recourse" as well as the clause "return without costs" as null. With reference to this latter clause, with a view to uniformity, he concurred in the considerations presented by Mr. Vivante.

Mr. Dantschow said that Bulgaria could not accept this clause.

Mr. Hammerschlag thought that the clause "without recourse" should be stipulated only by an indorser, not by the drawer. Moreover, the power of the drawer to add this clause would have no practical effect, for the drawer who inserted it would commit a genuine infanticide.

Mr. Van Gelderen was opposed to the clause, because it would take from the bill of exchange its special character.

Mr. Simons asked that the matter be sent to the sections.

The president was not opposed to this, but drew the attention of the assembly to the inconveniences of giving too much work to the sections.

Under these conditions Mr. Simons did not insist upon this proposition.

Mr. Cloos was opposed to admitting the clause when it emanated from the drawer.

Mr. Sylvain declared himself in the same sense.

Mr. Carlin was also of the opinion that this clause should be admitted only on the part of indorsers. The drawer who inserted it committed contradictio in adjecto.

Mr. Beernaert made a similar observation.

Mr. Wurth-Weiler expressed himself in the same sense.

Sir George Buchanan made the following declaration:

In England, in conformity with article 16 of the law, every drawer or indorser of a bill might insert an express stipulation (1) limiting his responsibility toward the bearer or relieving himself of it; (2) relieving the bearer in whole or in part of these obligations toward him.

Mr. Beichmann could not admit the clause except for indorsers.

The president put the question to the assembly on sending the subject to the sections, which was agreed to.

The president read question 5 (h):

Question 5. Should the law permit: (h) The clause which excludes the power of indorsement (Rektawechsel)?

Mr. Jitta emphasized the difference which the laws presented among themselves concerning the Rektawechsel. Thus in Germany, a Rektawechsel was not indorsible, but in Italy, on the contrary, this

possibility existed, always with this reservation, that it had no effect with regard to the drawer.

The president said that the observation of Mr. Jitta would appear in the minutes.

The next sitting was fixed for the next morning at 10 o'clock. The session ended at half past 12.

### THIRD SESSION, JUNE 25, 1910.

President, Mr. Asser.

The sitting was opened at 10.15 a. m.

The president reminded the delegates that the proofs of the proceedings of the sittings had been addressed to the members of the conference and begged them to send them back to the secretary with their observations, if necessary, within 24 hours.

Mr. Asser announced that he had received from several delegates a suggestion that the conference hold two sessions a day. He was not opposed in principle to the adoption of this proposition, but its greatest inconvenience would be in giving the secretaries a still greater volume of labor in the preparation of the minutes.

Mr. de Sampaio observed that if two sessions a day were held, the conference would run the risk of discommoding the diplomatic agents who were members and who had many other duties at The Hague.

The president replied that in fixing the opening of the afternoon session at 4 o'clock, all interests would be reconciled.

Mr. Carlin asked that it should be well understood that there should not be more than two sittings a day, whether in plenary session or in committee. This was accepted. The next sessions were to take place, however, in the hall of the second chamber of the states-general.

The president recalled that at the time of the last session several delegates had made observations on the subject of the responses of their Governments in the synoptical summary. This summary was a simple proof, in which it was important that the delegates should make the necessary corrections. They were requested, therefore, to inform the secretary of the correct text.

The order of the day called for the continuance of the general discussion.

The president stated that in regard to question 6, nearly all the powers had made similar responses. France, however, had considered that the question of duplicates and copies ought not to be regulated by the uniform law and Great Britain had declared that British legislation imposed upon the drawer no obligation in the matter. Italy, on the other hand, had set forth that she considered the obligation upon the drawer to furnish more than one draft of a bill of exchange as an anachronism which the uniform law ought not to sanction. Would the delegates of the powers which had not yet answered the Questionnaire communicate to the conference the attitude of their Governments on this point?

Mr. Sichermann declared that, whereas the bankers of Hungary were formally opposed to the rule which obliged the drawer to give in all cases several drafts of the bill of exchange, the Hungarian delegates (modifying in this respect the response given to the Ques-



tionnaire) declared that it was not proper to oblige the drawer to furnish several drafts of the instrument except in the case of an express understanding to the contrary. This was why, without enumerating all the motives of this decision, the Hungarian delegation proposed that the entire question concerning duplicates and copies be remitted to the sections, who should study it as well from the point of view of principle as of detail.

Mr. van Gelderen noted that in its response to the Questionnaire the Argentine Government had declared that the law ought to limit the obligation of the drawer to furnish more than one draft of the instrument when bills were drawn from one city on another. It seemed that this distinction was of some interest.

Mr. de Sampaio expressed himself thus:

In the name of my Government, I must make some declarations on different points of the Questionnaire which have already been examined by the conference.

On the first question my Government holds that the conference should occupy itself not only with the bill of exchange and the promissory note to order, but also with the check, because of the intimate legal correlation which exists between the two instruments.

My Government replies affirmatively to the second question as well as to the third.

The Government of His Majesty the King of Portugal, my august sovereign, does not think it necessary to deal with the fourth question. In regard to the fifth, the Portuguese Government answers affirmatively sections (a), (b), (c), (d), (e), and (h), but negatively sections (f) and (g). Nevertheless, in a spirit of conciliation, the Government of Portugal is disposed, on all the points of the Questionnaire, to make every possible concession, and the Portuguese delegation will accept, ad referendum, the opinion of the majority, in order to reach the agreement which seems so desirable.

In regard to question 6, Mr. de Sampaio thought that the bill of exchange might be drawn in more than one draft, on condition that each of these drafts should be numbered in a series, and that the language of each should be identical.

The president thanked the delegate of Portugal for his interesting communication.

Mr. Conant, in the name of his Government, made the following declaration:

The Government of the United States is in favor of taking every practicable step to promote the security of bills of exchange and convenience in their use. It is not within the functions of the Federal Government to fix the law in regard to matters of private law, except where they reach the Federal courts as the result of differences between citizens of different States and between citizens of the United States and of foreign States.

So keenly interested, however, have been the members of the American business community in securing uniformity of law in regard to commercial bills that already 37 States and Territories out of the 46 States and 2 Territories composing the Federal Union have adopted a draft of the negotiable-instruments law, prepared under the authority of a body of commissioners on uniformity of laws. This act is substantially the same in each of these States. There are slight differences, growing out of local practices and social policy, but the essential provisions as to the form, requirements, and negotiability of bills do not differ in important particulars. The first of these acts was passed by the State of New York in the year 1897 and it has been adopted by a number of States only within the past two years.

These facts are stated, first, to make clear the position of the American delegate, that he can only recommend, through the Federal Department of State, the enactment of desirable provisions of law to each of the 46 States separately; and, secondly, to indicate the amount of time and labor which has been required to bring about the comparative uniformity which now prevails among American States on the subject of commercial bills.



Obviously, in view of these considerations, the delegate of the United States would assume a weighty responsibility, and one difficult to carry into execution in effective form within a reasonable time, if he should join in a recommendation to establish a new code for negotiable instruments as a substitute for existing laws, or if he should recommend important and radical changes in the practice which has grown up under these laws.

From the standpoint of American bankers and merchants and of the Government of the United States, the adoption of such a policy would involve long-continued confusion during the period required to substitute the new code for that which it has already required 13 years to enact in 37 States and Territories, and would involve, in addition, the difficulties of interpretation by the courts which always arise in the application of a new measure departing radically from the language and effect of previous laws and judicial decisions.

The broad views and conciliatory spirit expressed by the distinguished delegates of Germany, Belgium, Switzerland, and of the French Republic, that worthy sister of the American Republic, have made a strong appeal to the sympathies of the American delegate, as they have probably to the entire conference. It would be a long step in the direction of promoting international commerce if comparative uniformity in law and practice could be brought about among the many States of continental Europe, even if some divergences should continue to exist between continental Europe on the one hand and Great Britain and her colonies and the United States on the other.

There are several points of European practice, especially in relation to international bills, which would be acceptable to American bankers if such points could be adopted as the uniform policy of the principal commercial nations. There are also provisions which are already embodied in the English statute, relating to the conflict of laws, which do not appear in the laws of the American States, which might be adopted as supplementary to those laws without conflicting seriously with them. Upon these subjects the delegate of the United States is willing to confer fully with the representatives of other Governments; but he prefers not to enter at length at the present time into the discussion of a uniform law, which could not be adopted by the American States as a substitute for their existing laws without disturbing that comparative uniformity which now exists among the various States and with other important commercial countries.

The president thanked Mr. Conant for his declaration. He had already informed the conference at its opening sitting of the considerable personal effort which Mr. Conant had made in America to reach the unification of the law of exchange and the excellent results which he had obtained. He was happy to note that the delegate of the United States of America would continue his efforts to complete his work.

The president proposed the reference of question 6 to the sections, which was ordered.

Question 7. Should the law regulate the documentary draft (bill of lading, policy of insurance, etc.)?

The president noted that the powers had all responded negatively to this question with the exception of Switzerland.

Mr. Wurth-Weiler observed that in the synoptical summary the response of the Grand Ducal Government was not considered as precise. The fault lay with a copyist, who had omitted the most important part. The response of Luxemburg should be completed by the following paragraph:

But whatever may be the interest which should be given to the documentary draft, it appears to us preferable not to regulate it in the uniform law. It would complicate this law uselessly to insert in it provisions connected with matters accessory to the bill of exchange.

Mr. Carlin reserved the privilege of giving to the sections explanations on the response of the Federal Government. The Swiss dele-

gation would, however, for the purpose of conciliation, perhaps abandon its attitude on this subject.

The president called the attention of the conference to the desirability of sending to the sections only questions on which important divergences of view had been disclosed. Other questions, like No. 7, would be examined only by the central committee, composed of the chairmen and rapporteurs of the sections.

Mr. van Gelderen thought that it would perhaps be interesting for the Swiss delegation to make known at the present time its opinion on this question. Unanimity might be immediately arrived at by the plenary assembly.

Mr. Carlin insisted on remission to the central committee. However, in view of the unanimity of the powers the Swiss delegation would probably withdraw its objections.

Reference to the central committee was ordered.

Mr. de Menezes made known that his Government answered question 7 in the negative.

Question 8. (Concerning indorsements.)

Mr. de Menezes said that, according to the law of his country, every indorsement before maturity, which was not given by way of agency, transmitted the ownership of the bill of exchange with the joint responsibility of the indorsers. To constitute a valid indorsement, the simple signature of the indorser, or of his special agent, put upon the back of a bill of exchange, was sufficient.

Mr. Pantschow declared that he made the same response to the question as Germany.

Mr. de Sampaio indicated the responses made by his Government to the various paragraphs of article 8, as follows:

The indorsement should be written on the bill of exchange or on a separate document annexed to the bill. In the latter case the bill of exchange should be fully described on the separate document. Indorsement might also be given by any other means which was sufficiently certain:

(a) Indorsement may be in blank.

(b) It is admissible by way of agency, provided that it is expressly mentioned.

(c) Indorsement subsequent to maturity should have in general only the effect of a cession of a claim, except in case of an agreement to the contrary between the one parting with the document and the transferee. This indorsement ought not to have any effect on the commercial nature of the instrument. When the bill has been protested within the proper time, indorsement should have all its legal effects, as if it had been given before maturity.

Section (b) was submitted for discussion. The president noted that the powers were unanimous, except Bolivia, for permitting indorsement in blank. Belgium, nevertheless, considered that the law should not concern itself with this question.

Mr. van der Rest declared that the Belgian delegation was disposed not to insist upon this point.

Mr. Beernaert observed that in making this concession Belgium wished, like Switzerland, to demonstrate the spirit of conciliation by which she was animated.

Mr. Lyon-Caen asked if it was certain that the affirmative responses to section (b) were proof of a complete understanding of the powers on this point. All were in favor of allowing indorsement in blank. Was it to be understood that they allowed it with the same effects?

Indorsement in blank was equivalent in France only to indorsement by way of agency. The French delegation, in answering section (b), wished to specify that, in departing from existing French legislation, it would admit, in conformity with certain foreign systems, that indorsement in blank would transfer ownership. It was a new step which France took toward harmony. It was important to know if the other powers gave the same interpretation to their response.

The question was referred to the central committee.

Section (c). (Indorsement by power of attorney.)

Mr. Vivante set forth the response of his Government to question 8(c), to the effect that it belonged to the internal legislation of each state to determine the expressions which should be employed for the forms of indorsement.

It was decided to refer the matter to the central committee.

Section 8 (d). (Indorsement subsequent to maturity.)

Mr. Cloos said that the response of his Government to section (d) was, as the editor of the synnoptical summary remarked, incomprehensible. This arose from an error in translation, which he regretted.

An indorsement subsequent to maturity ought to produce the effects of an indorsement and not simply those of a simple cession. If an indorsement was subsequent to maturity, two cases might present themselves. The bill of exchange might have been duly protested for nonpayment or it might not have been protested. The Danish delegation believed that, in the first case, the holder ought not to be compelled to have the draft protested again, but, in the second case, it would be equitable that the owner of the bill of exchange should seek for payment first from the acceptor before taking recourse against indorsers subsequent to maturity. In this last case, the indorsement subsequent to maturity would be equal to a draft at sight drawn by the first subsequent indorser.

The president requested Mr. Cloos to remit to the secretary the text which should be inserted in the synnoptical summary.<sup>1</sup>

Mr. Simons observed that the response of the German Government to section (d) was not complete. It was proper to add to it "but the party who pays shall not be bound to verify the authenticity of the indorsement."

Mr. Yáñez declared that the law ought to recognize four forms of indorsement—complete indorsement to the order of a person certain; indorsement in blank; indorsement for security; and indorsement by power of attorney, all these forms corresponding to the diverse relations of affairs which were completely different. All indorsements ought to transmit the ownership of a bill of exchange with regard to the debtor. Indorsement subsequent to maturity ought to have only the effects of a cession.

<sup>1</sup> This text was as follows:

"Indorsement subsequent to maturity ought to be permitted with the ordinary legal effects:

"1. If the bill of exchange has been duly protested for nonpayment, the party who indorses it becomes directly responsible to the indorsee, without liability upon the latter to first seek reimbursement from the drawee;

"2. If the formality of protest has been neglected, the bill of exchange should have the effect of a bill at sight drawn by the subsequent indorser."

Section (d) was referred to the sections.

Question 9. (Relative to the obligation of the drawer to provide cover and relative to the consequences resulting from fulfillment or default in this obligation.)

The president said that all the powers except Bolivia were of the opinion that the law ought not to contain provisions relative to cover.

Mr. Lyon-Caen thought proper to make a declaration which he would be undoubtedly compelled to repeat before the sections. He recalled that in regard to cover (provision) there existed profound differences between different systems of law. Certain ones, notably those of Germany, the Scandinavian countries, Austria, and others, did not deal with this question; in those countries the cover, if it existed, continued to belong exclusively, except for a formal agreement to the contrary, to the drawer. In France, although the law had not pronounced upon this point, an entirely different solution had been adopted. This solution had, moreover, been formally sanctioned by Belgium, and, according to the English law of 1882, the application of the Scotch law, conforming to the Franco-Belgian system, had been recognized.

Without entering into extended details, the French delegate felt that he ought to declare at once that it would be impossible for the Government of the Republic to renounce a practice with which the interested parties were peculiarly satisfied. This determination was not dictated by theoretical reasons, but was based on an inquiry made, in view of the question, by the Government from the establishments of credit, and they had been unanimous on this subject. In spite of his warm desire for conciliation, it would be impossible for the French delegation to compromise on this point. Compelled, therefore, to seek a different solution, Mr. Lyon-Caen was able to inform the conference of a proposition which would be without doubt made on this subject by its author, the first German delegate, Dr. Kriege. This solution, considering the impossibility of attaining unity on the question of cover, would tend to seek the means of regulating the conflicts which might arise from the divergence in legislative systems. Hence Mr. Lyon-Caen proposed to refer question 9 to the committee on private international law.

Mr. Simons supported the proposition of Mr. Lyon-Caen, and it was adopted.

Mr. de Sampaio announced that he answered question 9 in the negative.

Question 10 (a).

Mr. Sichermann said that the Hungarian delegates desired to add on this subject to the reply given to the Questionnaire, that they found it desirable to permit stipulation in the bill of exchange that presentation for acceptance was obligatory or that such presentment was prohibited.

Mr. de Menezes declared that the presentment of the bill of exchange for acceptance ought to be optional when the date of maturity was certain, but obligatory when it was drawn at a certain time after sight, because in this case the date of acceptance established the beginning of the time it was to run.

The clause forbidding the presentment of the bill of exchange for acceptance to the drawee ought to be considered null.

Mr. de Sampaio expressed himself that, in principle, the option ought to be recognized in the holder to require or not to require acceptance. Presentment for acceptance ought, as a general rule, to be optional, and ought to be obligatory only for bills payable at a certain time after sight or payable in another place than the domicile of the drawee.

Mr. Mayer made the following declaration:

I ought to modify a little our response on this point to the Questionnaire. According to our opinion, the holder ought to have always the right of assuring himself whether the drawee will be disposed or not to accept the bill of exchange and to satisfy himself in this manner as to the value of the bill. It is true that drafts are often found in commerce which bear a clause forbidding presentment for acceptance. It is sufficient, then, that the parties should agree upon his point outside the bill of exchange; but it would be dangerous to establish in the law a prohibition of this sort which is contrary to the nature of the bill of exchange. Such a prohibition would be a source of abuse and of more or less dishonest maneuvers.

Further, we believe that this rule, if inserted in the law, would be ineffectual, because it would be very difficult to find a corresponding penalty.

In regard to the stipulation rendering obligatory the presentment for acceptance of the bill, we believe that sufficient reason does not exist to permit the drawer to impose such an obligation on the first holder under penalty of losing his right of recourse, unless the bill of exchange is payable in a different place from that of the domicile of the drawee.

Mr. de la Rica y Calvo announced to the conference that he would be in a position in a few days to present a memorandum containing the responses of his Government to the Questionnaire of the Netherlands.

Mr. Sichermann said, in regard to the second part of question 10:

The Hungarian delegates add to the response given to the Questionnaire that if a bill of exchange is payable at a certain time after sight, it is only the presentation for visa which is necessary to fix the point of departure of the term of maturity, because, apart from other considerations, the bill of exchange not subject to acceptance need not be presented for acceptance. But it went without saying that such presentment was included in presentment for acceptance and that the dated acceptance took the place of the visa.

Mr. van der Rest asked that the response of Belgium, inserted in the synoptical summary, should be corrected as follows:

The obligation to present the bill for acceptance should be recognized only in the case of section (b).

Mr. Simons corrected also the response of the German Government. It should be expressed thus:

(b) Bills of exchange drawn at a certain time after sight should be presented for acceptance and protested in case of nonacceptance within a period of six months after their date, unless the drawer has in the document itself prescribed a different date. Neglect to observe this limit should involve the loss of recourse against the drawer and the indorsers.

Bills of exchange drawn at sight should be presented for payment within a period of six months from the date of the instrument, under penalty of loss of recourse against the drawer and the indorsers. If the drawer or any indorser has provided for a special period, this period shall be observed under penalty of loss of recourse against the party who has fixed it.

Mr. Jitta thought that the attention of the sections ought to be called to the distinction between bills of exchange at sight and bills at a certain time after sight, just as had been done between the acceptance and the visa.

Count Ehrensvärd declared that his response was in harmony with that of Belgium, Denmark, and Norway.



Mr. Carlin specified as follows the response of his Government:

There is no obligation to present the bill of exchange for acceptance when it is drawn at a certain time after sight. It suffices that it be presented to the drawee, in order that he may have knowledge of it and may note on the instrument the date of presentment.

It was voted to refer question 10 to the sections.

Question 11 (c).

Mr. de Sampaio declared that the acceptance ought to be written on the bill itself and signed by the acceptor. The simple signature of the drawee placed on the face of the bill should be considered as an acceptance. Acceptance given on a separate document ought not to be permitted. The drawee should be permitted to cancel his acceptance so long as he has not parted with the bill of exchange and if 24 hours have not elapsed since the presentment.

Mr. Simons demanded the reference of this article to the sections, which was agreed to.

Question 12.

Mr. de Sampaio made the following declaration:

Acceptance ought to take place within the 24 hours after the presentment of the bill of exchange and ought not to be conditional, but it should be permitted for a part of the amount of the bill.

Consequently the refusal of acceptance may be also partial.

Refusal of acceptance ought to be followed by a protest left at the residence of the drawee (a).

The holder should have recourse against the indorsers, the drawer, and the party who has given the guaranty (b), all of whom should have the choice between giving security or reimbursement (c).

Mr. Dantschow declared, in responding to question 12 (c), that those against whom recourse was exercised ought not to have the choice between giving security or reimbursement, but that it was preferable to give to the holder the right to demand reimbursement with the deduction of a discount.

At the request of Mr. Simons, section (c) of question 12 was referred to the sections.

Question 13.

Mr. Sichermann declared that the Hungarian delegates added to the response given on this subject to the Questionnaire that the right to demand reimbursement ought to be given also in case of the insolvency of the drawer of a bill of exchange which was not subject to acceptance.

Mr. de Sampaio made the declaration that the failure of the drawee ought to have as a consequence that the bill should become immediately due and payable.

Mr. de Menezes expressed the view that in case of the failure of the acceptor, the bill of exchange ought to be considered as having matured. The payment, however, might be adjourned until the day of the ordinary maturity of the document if there was an acceptance by another drawee, or—in default of this—acquiescence of the holder, expressed in an act of protest, that the bill of exchange might be accepted by a party intervening voluntarily.

Mr. Simons asked the reference of this question to the sections, which was agreed to.



**Question 14.**

The President recalled that at the last sitting the conference decided, on the proposal of the German delegation, to discuss at the same time with No. 14 sections (*d*) and (*e*) of question 5.

Mr. de Sampaio declared:

Acceptance for honor ought to be permitted only after a protest for nonacceptance has been drawn against the drawee.

Acceptance for honor may be given by:

1. Any person designated for this purpose in the bill of exchange either by the drawer or by one of the indorsers;

2. Any other person, but on the condition that neither the drawee nor the person designated by the drawer or the indorsers have accepted.

Acceptance for honor ought to be signed by the person intervening on the bill of exchange and set forth in the protest for nonacceptance, with notice to the drawee.

Acceptance for honor involves for the person intervening the obligations which would have rested upon the drawee from the fact of his acceptance. It does not discharge the drawee, the indorsers, nor the drawer from their liabilities.

Mr. Simons considered that the questions relative to acceptance for honor were difficult, and as their practical importance was inconsiderable it seemed to him that their discussion in full assembly was useless. He asked the reference of the matter to the sections.

The president was not opposed to the adoption of this proposition, but regretted that the delegates did not think they ought to make their opinions on these points known at present.

**Question 15. (Guaranty by third party.)**

The president noted that the powers were unanimously in the affirmative, except France, who made a restriction in regard to the giver of a guaranty who was already liable on the bill of exchange.

Mr. Lyon-Caen explained that the French response conformed to the law on this subject in all countries. The bond was intended to enhance the value of the bill of exchange. How would this end be attained if the giver of the bill was already liable?

The president thought that in certain cases the restriction might be harmful, as, for example, when a person, after having indorsed the draft or having given a guaranty for an indorser, wished to give his guaranty for the drawer. Great Britain had declared that the guaranty was unknown there. Did the British delegate desire to make a communication on this subject?

Sir Mackenzie Chalmers declared that the difference of view on this point was a pure question of words. The guaranty did not exist in England, but to obligate himself the party who was called the giver of the bond (*le donneur d'aval*) had only in England to affix his signature upon the instrument.

Mr. de Sampaio made the following declaration:

The guaranty is admitted (*a*). It ought to be made the object of express mention, either on the bill of exchange itself, on a separate document, or even by letter. The simple signature given upon the back of a bill of exchange by a person who is neither drawer nor acceptor constitutes a guaranty.

The effect of the guaranty is to render the person who has signed it jointly responsible for all the liabilities of the person for whose profit the guaranty has been given and to confer upon him all the rights of this person. In default of a special declaration the guaranty is presumed to have been given in favor of the acceptor or, in default of an acceptor, in favor of the drawer (*b*).

Mr. Vivante desired to submit an observation on the French response. The president had cited an example in which the guaranty of a bill of exchange by a person who was already liable thereon would present a practical feature. But the guaranty of an indorser for an acceptor was another more frequent example. This question might be profitably examined in the sections.

Mr. Lyon-Caen recognized the correctness of the observations of Messrs. Asser and Vivante. The French Government had only intended to set forth the general rule, and the cases cited were exceptional.

Mr. Sichermann declared that there was a great difference between the German guaranty and, for example, the Hungarian, Bulgarian, Russian, and perhaps the Japanese and Italian guaranties. The Wechselordnung required a joint signature of the principal declaration, while the Hungarian law prescribed a special declaration under the form of a bond. There were, moreover, differences with regard to the relations existing between the principal debtor and the party giving the guaranty. The differences rendered it necessary to remit this question to the sections.

Question 16. (Maturity.)

Sir George Buchanan expressed himself in these terms:

Before pronouncing on the question of days of grace, we desire to declare that we are not authorized to take decisions nor to make declarations which would bind our Government. All that our instructions permit is to give our personal opinion and to formulate the propositions which we consider it useful to recommend to our Government. With these reservations, we are disposed to take into consideration the question if it will be possible to recommend to the Government of His Majesty the abolition of days of grace.

The president thanked Sir George Buchanan for his declaration, of which the conference would be happy to take notice.

Mr. de Sampaio made the following declaration:

The amount of the bill is payable on the day of maturity, or before maturity in case of the failure of the drawee (Q. 13). If the bill indicates the day of maturity, payment should be made on the same day. If maturity falls on a holiday, payment should be made on the first business day. If the bill of exchange is payable at a fair, it is payable on the last day of the fair. If the bill is payable at sight, it is payable on the day of presentment. If the bill is payable a certain time after sight, the point of departure of the time is the date of acceptance, or in default of acceptance, the date of the protest for non-acceptance.

Mr. Lyon-Caen announced that he would transmit to the secretary a new translation of the French response to the third paragraph of question 16 (relative to usances), since the printed response was unintelligible by reason of an error in the copy.

Messrs. Beichmann and Jitta asked the reference of question 16 to the sections, which was agreed to.

Question 17. (Payment.)

The president requested the English delegation to give to the conference some enlightenment on the "reasonable time" within which a bill of exchange at sight ought to be presented for payment. What was English jurisprudence in this respect?

Sir Mackenzie Chalmers replied that jurisprudence had not fixed a definite limit of time. In practice, especially where the check was involved, it was pretty well established that a banker would not pay

a check, without a special order, more than six months after its issue.

Mr. Cloos declared that the Danish law contained no provision relative to days of grace, but it provided for a delay of two days before making the protest.

Mr. de Sampaio, made the following declarations:

The payment of a bill of exchange ought to be required and effected on the day of maturity (*a*).

The holder ought not to be obliged to receive the amount of a bill of exchange before the day of maturity (*b*).

The drawee who pays before maturity is responsible for the validity of the payment. The drawee who pays on the day of maturity is legally discharged, save in the case of the following exceptions: Opposition from a third party; loss of the bill; incapacity of the holder (*c*).

Except for a contrary stipulation, the bill should be paid in money or notes which are legal tender at the place of payment. If the amount of the bill of exchange is indicated in foreign money, the payment, except for agreement to the contrary, should be made according to the rate of exchange established on the day before the day of maturity (*d*).

The holder may accept a partial payment, even in the case where acceptance was given for the entire amount (*e*).

Sections (*b*) and (*c*) did not lead to any discussion, but were left for examination by the central committee.

Question 17(*d*).

Mr. Simons asked its reference to the sections. The German delegation would explain to the section the reasons for their response to the Questionnaire.

Mr. Beernaert remarked that the Belgian Government had not answered this question, because it considered that it did not belong to the law of exchange.

The president thought that the sections would express themselves on this point. It did not seem possible to avoid this question, which in the Netherlands law was the subject of two articles.

Reference to the sections was ordered.

The president read to the conference a letter in which Mr. Sylvain, delegate of Haiti, having been obliged to return to his post at Paris, excused himself for not being able to be present at all the sessions of the conference.

The session terminated at noon.

#### FOURTH SESSION, JUNE 27, 1910.

President, Mr. Asser.

The session was opened at 10.15 a. m.

Before continuing the general discussion, Sir George Buchanan proposed to make the sessions longer and to give up those of the afternoon.

The president replied that the general discussion would probably be terminated at this session, and that each section would then be free to regulate its own working hours. The president read a letter from Mr. Beernaert, announcing his absence for several days. He also made known to the conference that, according to a communication from the consul of Greece at Amsterdam, the Hellenic Government had named two delegates, who were, however, prevented by

their university duties from participating in the work of the conference.

The delegate of Nicaragua telegraphed from Paris to the president that he would reach The Hague on Wednesday next, the 29th instant.

Mr. Yáñez asked the opportunity to make an observation in regard to question 17. The majority of the powers were agreed in establishing in the law the obligation of the holder to accept a partial payment of the bill. This idea would be contrary to Chilean legislation. According to the opinion of the delegate of Chile, the acceptance of partial payment of a bill of exchange, like that of partial acceptance, should be optional with the holder, who should not be obliged to accept a less sum than the amount of his claim, as the creditor was the best judge of his own interests. Chile would adhere on this point to the response of Great Britain.

The conference proceeded to the consideration of Chapter VIII, concerning payment for honor.

Question 18. (a) By whom and for whom should payment for honor be made?

Osman Bey made the following declaration:

In our response to question 18 we said that payment for honor might be made by the persons indicated by the drawer as bound to pay the bill of exchange in case of need or as acceptors for honor. If in a bill of exchange not paid by the drawee the drawer has indicated as bound to pay in case of need or as acceptor for honor persons domiciled in the place where the bill is payable, the holder ought not later than the second business day after maturity to present the bill for payment to all these persons and to establish the result of the presentment in a protest for nonpayment. In case of neglect to do so, he should lose his recourse against the drawer, against the party for whom intervention has taken place, and against his successors; and we have added at the end of our response that payment for honor may take place for the drawer, for one of the indorsers, or for the giver of a guarantee (aval). I now wish to modify this in the following terms:

"Any third party may intervene for any signer of the bill of exchange, whether drawer, indorser, or guarantor. The refusal of payment should be established by a protest."

The president declared that a record would be made of this declaration.

Mr. de Sampaio made the following declaration:

Mr. President, as it is my duty to present to this illustrious assembly in the general discussion the point of view of my Government, I think that it will be preferable not to fatigue the attention of the honorable members of the conference assembled here with the most praiseworthy purpose of seeking to find, by means of mutual concessions, a ground of understanding which will be productive in securing unification, wherever possible, in the law of exchange. I think, as I have said, that it will be better to transmit to the secretary the opinions of the Government of His Very Faithful Majesty, asking at the same time the permission of our eminent president, and expressing the wish that the secretary will insert them in their proper place in the proceedings. I reserve to myself in any case, in view of the great commercial interests of my country, not only with foreign countries, but also with its numerous rich and great colonies, of making some urgent observation, if the occasion arises, which I shall always seek to make as short as possible.

The president replied that all the declarations made to the conference would be printed, but it would be preferable to leave to the judgment of the secretary's bureau the decision whether to insert them in the documents or in the minutes.

Mr. Wurth-Weiler made the remark that it appeared from the responses to question 18 that the majority of the governments demanded that payment for honor should be established by an act of protest. But what if there was no protest? What if it concerned an instrument "return without cost," and what also when the protest might be replaced, as was the case in certain countries (including Luxemburg), by a simple declaration and the refusal established on the instrument itself? He called the attention of the conference to these two points, in order that they might be examined by the sections.

Mr. de Sampaio submitted the following answer:

Payment for honor may take place for the account of one of the signers (a).

Payment for honor should be set forth in the protest (b).

The party who pays a bill of exchange for honor is subrogated to the rights of the holder. If he pays for account of the drawer all the indorsers are discharged; payment for the account of one of the indorsers discharges the subsequent indorsers (c).

This was assented to. The president proposed to refer the entire subject of question 18 to the sections.

Question 19. (a) What formalities should be fulfilled by the holder as the condition of the right of recourse?

Mr. Vivante observed that experience in Italy had proved that the protest might be advantageously replaced by a declaration made by the debtor.

The president thought that this question was one of form and ought, consequently, to be governed by the internal legislation of each country.

Mr. Lyon-Caen proposed to the conference to pass upon the questions connected with the uniform law and on those which ought to be regulated by the legislation of each country. The first ought to be referred to the sections; the others to the committee on private international law.

Mr. de Sampaio filed the following answer:

If the bill is payable at its maturity the holder should be obliged to have it protested within 48 hours, under pain of loss of all recourse against the drawer and the indorsers.

The president proposed to leave this question to the judgment of the sections.

(b) Should notice of default in payment be given to the obligees (indorsers and drawers), and within what period of delay?

Mr. Concha declared that the legislation of Chile did not require formal notification to the obligees, but only notice by an ordinary letter to the immediate predecessor. Each predecessor thus notified should advise his immediate predecessor. This procedure was preferable, because, in practice, it was very difficult to make notifications against the will of the parties.

Sir George Buchanan asked the rectification of the word "presented" which was printed by error on page 60 of the synoptical summary (question 19 (a)) in place of the word "protested."

The president asked Osman Bey what proof could be obtained that a letter contained notice of protest, as indicated in the Ottoman response.



Osman Bey replied that it was for the person making the demand to give this proof.

The president called the attention of the conference to a method of procedure proposed by him in an article, which appeared in 1894, under which a party who wrote a letter whose contents he wished to be able to prove in an official manner, might have it copied at the post office before sending. The copy, properly certified, would be delivered to the sender. This procedure had not yet been introduced into the Netherlands.

Mr. de Sampaio filed the following response:

The holder of a protested bill ought to give notice of the protest to his indorser, who should give notice to the preceding indorser, and thus back to the drawer. Notices may be made by registered letter within 48 hours from the day on which the interested parties are informed of the protest.

Mr. de Menezes declared that the Brazilian law, which was quite new, since it dated from the year 1908, contained in article 30 the following provision:

Notice may be given by registered letter. With this object the envelope must be presented open at the post office, where, after the existence of the notice has been established, mention shall be made of the contents of the registered letter, both on the postal receipt and on the stub.

Question 20. What is the object of recourse?

Osman Bey made the following declaration:

In our response to question 20, we answered that the object of recourse is to be able to recover the amount indicated in the bill of exchange from one or the other of the persons who are jointly responsible as signers of the bill. This response being somewhat laconic, I should explain it in the following manner: That the obligation of the parties jointly liable extends to the amount of the bill of exchange, to the interest which runs from the day of protest, and to other legitimate expenses, in which are comprised reexchange, which may even be cumulative.

Mr. de la Vallée Poussin asked the correction of a typographical error regarding the word "annulled" (annulés), which should be replaced by the word "cumulated" (cumulés), on page 64 of the synoptical summary.

Mr. Jackson declared that the British delegation had not understood fully question 20 and wished to modify their response as follows:

Recourse has for its object the amount of the bill of exchange, expenses duly incurred, and interest until the day of payment. The customary rate of interest is 5 per cent. (Art. 57, bills of exchange act.)

Mr. de Sampaio filed the following response:

The action of the holder against the signers of the bill has for its object the reimbursement of the principal, interest, costs of protest, and all other costs which may be legitimate. This action may be obviated by the redraft.

Question 20 was referred to the sections.

Question 21. Is the holder who wishes to exercise recourse compelled to observe the order in which the different individual obligees jointly liable have signed the bill of exchange, commencing with the last indorser, etc?

Mr. de la Vallée Poussin observed that the response to question 21 assigned to Belgium was not the exact equivalent of that which she had really framed. This response indicates clearly that the holder of the instrument may exercise his recourse against anyone of the



debtors on the instrument without taking account of the order of the signatures. There should be substituted in the synoptical summary for the existing text these words, "as in Germany."

Mr. Wurth-Weiler put the question whether, when one has exercised recourse without success against one of the obligees, one may still exercise it against another.

The President observed that this question was already covered in question 21 of the Questionnaire, but that it would perhaps be useful to put it more explicitly in the sections.

Mr. de Sampaio filed the following response:

In the exercise of his recourse against the signers of the bill the holder is not obliged to follow the order of the indorsements.

Reference to the sections was adopted.

Question 22. What are the rules to be established with reference to defaults: (a) In regard to the drawer? (b) In regard to indorsers?

Mr. Simons proposed to refer this question to the committee on international private law, as being intimately related to the question of cover.

Mr. Vivante saw an advantage in discussing the question first in the sections, which might then, if they thought proper, refer it to the above-named committee.

This was agreed to.

Mr. de Sampaio filed the following response:

The holder of a bill of exchange which is not paid and who does not have protest drawn within due time loses all recourse against the drawer and the indorsers.

Question 23. Is it sufficient for the law to contain provisions for the purpose of granting to the loser of a bill of exchange (accepted or nonaccepted) the right: To demand payment by giving a bond? Or to demand a duplicate?

or rather:

Question 24. Should the process of Amortisations-Verfahren (cancellation) be established?

The president asked the German delegation if the process of amortization as applied in Germany had given good results. Messrs. Simons and Fischel answered affirmatively, and the delegates of Austria expressed the same opinion.

The two questions were referred to the sections.

Question 25. In either of these cases what should be the position of the holder of the bill of exchange who proves his ownership by a series of indorsements descending to himself?

Mr. Carlin observed that in the response made by Switzerland to this question, "article 190" should be replaced by "article 790."

Mr. Simons remarked that it would be useful to elaborate the response of Germany. In Germany the holder, after amortization, could not exercise any other right.

Mr. Beichmann supported this view.

Mr. de Sampaio filed the following response:

The bearer has the right, in case of the loss of a bill of exchange, to demand another draft, according to the procedure of the country where the bill has been drawn. The uniform law should contain a provision under which the signers of the lost bill of exchange should be liable for payment during the course of the procedure, but on condition that notice had been given to them, and that the holder had furnished sufficient bond.

The president proposed to modify the question so as to read:

What in this case (the absence of amortization) should be the position of the holder, etc.?

He was of the opinion that after this modification reference to the sections would not be necessary.

The conference passed to the consideration of Chapter XI, concerning defects of form and substitutions.

Question 26. What provisions should the law contain with reference to omissions and other defects of form?

Mr. de Sampaio filed the following response:

The document shall not be considered as a bill of exchange which does not contain the essential particulars (indication of the amount, name or designation of the drawee, indication of the person to whom or to whose order the bill should be paid, and signature of the drawer).

The question was referred to the sections.

Question 27. Is it necessary to regulate the effect of substitutions, even if the condition of remittance from one place to another is suppressed?

Mr. de Sampaio filed the following response:

Suppression of remittance from one place to another (No. 4) has involved that of frequent substitutions in the matter of the bill of exchange. Every substitution of whatever nature, whether of persons, of the status of the person, of domicile, etc., ought to be considered as a forgery and as such to be assimilated to the crimes provided for in No. 28.

He asked that this question be referred to the sections, which was adopted.

Question 28. What should be the effects of forgery when it concerns: (a) The signature of the drawer, an indorser, or the acceptor? (b) The material alteration of the contents of the bill of exchange?

Mr. de Sampaio filed the following response:

Forgery of the signature of the drawer renders the bill of exchange completely void. Forgery of the signature of an indorser nullifies subsequent indorsements, and forgery of the signature of the acceptor should nullify the guarantee given for his account. The effects of material alteration of the contents of the bill of exchange ought to be determined according to the principles of the common law and with regard to the facts.

Mr. Schneider indicated a typographical error on page 79 of the synoptical summary, where the words "Russian law" should be replaced by the words "Swiss law."

Questions (a) and (b) were referred to the sections.

Question 29. Should the law regulate the form of protests, including: (a) The day (force majeure) and the place where they should be drawn; and, in that case, (b) should protests through the post office be admissible or not?

Mr. Hammerschlag spoke as follows:

Permit me, Mr. President, to take the floor to indicate a slight error in the synoptical summary concerning the reply of Austria to question 29. The summary says, "Austria the same as Germany." That is entirely correct as to the question of the date and place of protest. We are also of the opinion of Germany that the uniform law ought to regulate the effect of vis major and that it ought not to excuse the neglect to protest, except when it results from a public calamity in the place where the protest should be drawn, while a vis major concerning only the holder of the bill of exchange should not be taken into consideration.

But we are not of the opinion of Germany in regard to the effect of such a public calamity, and I ask permission to fill the gap in our response to this question. By the expression "public calamity" (allgemeiner Nothstand), we

include also the case of a moratorium, and it seems to me that it is one of the most important, if not actually the most, important of the tasks of an international law on the bill of exchange to regulate this question, which has caused so many difficulties in international commerce.

Well! We do not consider it proper to extend the delay in presentment or of protest in the case of a public calamity, but consider it preferable that in such a case presentment and protest may be replaced by an official certificate of the existence of said calamity. It seems to us that reasons very important, of a character economic, juridical, and equitable, militate in favor of this proposition.

Delay in presentment would have as a result to prolong the responsibility of all the indorsers, which would be entirely contrary to the character of the law of exchange, which requires the termination of the liabilities as promptly as possible. Especially in the case of a moratorium, delay in the protest would have the effect of giving to a State the power to prolong as much as it wished the responsibilities of the indorsers, subjects of another State. This would be an infringement of the rights of other States.

From the economic point of view it would be dangerous to throw upon the last holder alone of a bill of exchange the consequences of vis major. He would not be able to obtain payment from the drawee and he would be deprived of his rights of recourse during the entire duration of the public calamity. In the case of public calamity of long duration, such as the earthquake at Messina and in the case of moratoria, banking houses holding many bills of exchange on the country affected by the public calamity might suffer great embarrassment.

Further, the last holder has without doubt acquired the bill of exchange, relying not only on the credit of the drawee living in the country stricken by the calamity, but also and perhaps even more on the credit of the indorsers belonging to other countries. It would be very unjust to deprive him for the entire duration of the public calamity of his rights against the indorsers. If, on the contrary, the protest could be replaced by the certificate of the existence of the calamity, all the rights of recourse would be preserved and it would be only the first holder of the bill of exchange who would suffer the consequences of the public calamity. This would be proper, because he acquired the bill of exchange relying only upon the drawer or the drawee living in the place where the calamity occurred. This manner of solving the problem of vis major has the advantage of diffusing the consequences over a great number of people.

It can not be disputed that strong reasons justify the rule proposed by Germany, but the reasons which have dictated our proposition seem to us sufficiently strong to obviate entering at present into the details of this question, and I reserve more detailed explanations for the section. Permit me to add that it will be necessary to adopt some amendments to our rule for the case of a moratorium. The object of these amendments will be to make it clear that a moratorium shall have effect only on the subjects of the country which has decreed it and will prevent the possibility of the subjects of that country being unable, during the duration of the moratorium, to require payment from the subjects of other countries.

Mr. Carlin, while favoring reference to the sections, brought out the fact that the synoptical summary did not give the Swiss response to the question on vis major. This response, he said, might be framed thus:

If the protest can not be drawn by reason of vis major (public calamity, interruption of communications, moratorium decreed by the State), the holder has the right of recourse without protest, subject to furnishing sufficient proof of the circumstances.

Mr. Lyon-Caen asked that the cases of vis major be defined. Up to the present time there had been discussion only of public calamities, but there were also cases of individual vis major. It ought to be decided if these last also should be assimilated to the first. In France it was the courts which dealt with this question. It was necessary at the outset, if it was desired to avoid conflicts of legislation, to agree upon the meaning of the idea of vis major. It would then be necessary to refer the question for examination to the sections.

Mr. Vivante declared that what had been proved by experience, as in the earthquake in Sicily, should not be forgotten. It seemed to him inadmissible to suspend recourse in the case of a public calamity for the following reasons:

It ought to be sought, if disturbance was not to be caused in the normal course of events, to restrict, as far as possible, the consequences of a misfortune occurring at a given place. If recourse were suspended, banking houses would meet this measure by refusing discounts to clients who had drawn a bill of exchange on a country stricken by a public calamity. The facilities given by a government to certain obligees ought not to be applied in favor of all the obligees. This point of view was in harmony with the principle of the bill of exchange, according to which the obligations of different debtors were independent of each other. Solidarity of obligations had for its object to afford to the holder the means of obtaining the amount of the bill. The advantages of this joint liability would be lost if all the debtors were able to avail themselves of a vis major which concerned only one or several of the debtors. Mr. Vivante concurred for these reasons in the opinion of the Austrian delegation.

Mr. Yáñez made the following declarations:

The law ought to require protest, the sole means of proving refusal of acceptance or of payment.

Protests ought to be required also for the amount not accepted or not paid if the holder consents to partial acceptance or partial payment.

The protest ought to constitute the only document giving to the holder the right to exercising recourse against the parties liable.

The protest should be drawn on the day of maturity or, at the latest, within two business days following.

The protest ought to contain a copy of the bill of exchange and be signed by a notary or a competent ministerial officer.

In case of vis major, the period for protest should be prolonged as much as necessary. I concur on this subject with the observations just made by the delegate of Austria.

The protest should be made at the residence of the party who ought to pay the bill of exchange.

In our opinion, the law should regulate the effects of protest in regard to the debtor, whether the protest be made directly in the presence of the debtor or drawn in his absence, or without his knowledge.

The protest which is not drawn in the presence of the debtor occasions in practice many difficulties.

Above all, it is essential that the bill of exchange should guarantee to the holder immediate payment and, if possible, without contest. If the protest is made in the presence of the debtor, the drawer has the right to compel the bankruptcy of the drawee, if he is a merchant, or, if not, to demand an attachment.

But if the protest is drawn in the absence of the debtor, the holder ought not to be given this right, for this would be to give conclusive force to an act prepared outside the presence of the debtor.

We believe that the law should deal with this case and regulate the guarantee of the rights of the holder. We propose on this subject the following article:

"If protest is not drawn in the presence of the drawee, such protest shall be published at the place where it has been drawn for a number of days, to be fixed by the national law. When this delay has expired, the protest shall have the same effects as if it had been drawn in the presence of the drawee."

Mr. Simons considered the question of vis major of such difficulty that it would be advantageous to probe it to the bottom in the sections. The deductions of the delegate of Austria seemed to him, nevertheless, worthy of an immediate response, which he preferred to leave to his colleague, Mr. Fischel.

Mr. Fischel spoke as follows:

The question on which the Austrian delegates have engaged us is one of the most thorny and one which I should prefer to treat in the section. But in

view of the arguments which have been set forth by Mr. Hammerschlag, it is perhaps useful to touch on some of the reasons which have led us in Germany to prefer a different solution. At the time of the preparatory discussions which we had with the commercial and banking experts, the solution which our Austrian colleague wishes to adopt in this matter was discussed fully and exhaustively, but we found in it so many difficulties that we were compelled to abandon it, and what we have heard to-day does not appear to us to solve these difficulties. I beg you then to permit me, without stating all the reasons which we have against a solution in the nature of the Austrian proposition—reasons so numerous that they would compel me to take too much of your time—to touch on only a few points.

It is evident that when a disaster afflicts a country—when a public calamity has taken place—the most ingenious solution can never repair the damages which this calamity causes to commerce. But it is necessary to try to rid it of the most painful consequences and to scatter their effects in a manner not to increase the disturbance, but, on the contrary, to reduce it as far as possible and to treat with justice all parties interested. As you know, the present state of legislation is entirely unjust to the holder, when a case of *vis major* prevents the presentment of a bill of exchange. This situation certainly can not be maintained, but on the other hand, the proposition which we have just heard seems to favor the holder too much.

If it is permitted him to immediately send back every draft which he is not able to present and to take his recourse immediately against the indorser, one puts too great a part of the disadvantage upon the back of the latter. It is too unjust for him. The immediate possessor, who has bought the paper, enjoys the interest by means of discount. It can not be said that the disaster occurring during the existence of an instrument does not concern him.

Beyond this there is, in my opinion, another reason—an economic reason of the first importance—which opposes the solution of a simple return without presentment, without protest, and for immediate recourse. If the public calamity is of great scope—and particularly at the moment when the calamity itself has prepared the ground for a crisis—you are going to cause a very great disturbance by putting in motion all the bills of exchange which can not be presented. Your demand for reimbursement will fall most frequently upon a void. You will be obliged to sue, besides your direct obligee, his predecessors also, and perhaps with the same negative result. The trouble thus caused will involve a multiplication of the original sum. Thousands of millions would probably be at stake! Many failures would inevitably result. Is this procedure really necessary? Experience has shown that under all circumstances where a disaster prevents collection at maturity, nevertheless as soon as the situation returns somewhat toward the normal state, the greatest part, I should say even 90 per cent of drafts are regularly paid by the drawee. Is it not entirely useless to send these documents, by a new provision of law, on a return trip back to the drawer?

You have thus simply augmented entirely beyond measure the financial consequences of a calamity. Mr. Hammerschlag has told us that paper is taken generally upon the credit of the indorser. This is perhaps often the case; but is it not also true that in many cases it is not at all upon the indorser that one relies, but, on the contrary, upon the great confidence which is placed in the value of the acceptance, which facilitates the circulation of instruments of commerce and of banking? The indorser certainly very often, when he indorses paper upon a drawee, which is reputed sound or perhaps even of the first class, does not think he is running a serious risk. The sums for which he is liable may be thus entirely out of proportion with his fortune. Is it not necessary to take into consideration also that the party who sells the paper does it generally because his means do not permit him to keep it in his portfolio until maturity, and that, on the other hand, the party who holds drafts at the moment when the public calamity occurs has already invested his money in this paper? It is to be supposed that if he does not collect his money at the exact date the embarrassment to him will be less serious than would be recourse against the indorser, who is called upon suddenly to take back all the bills which he has indorsed on a region stricken by misfortune.

In many cases the circumstances which prevent regular presentment do not last long, as, for example, the case of interruption of communications resulting from railway strikes. In these cases, if the law obliges the holder to await reestablishment of a normal condition, he will find himself simply in the position that this involuntary extension, depending nowise upon the actions of



the holder, of the indorser, or of the drawee, would have the effect for the holder that the bills of exchange in question would have for him simply a slightly longer term. Perhaps if in the beginning they had been presented to him for discount with a longer maturity he would have taken them without hesitation. I do not say that he does not suffer from the calamity, but it is necessary that he should also bear his part of it. I do not believe that in the great majority of cases immediate return of the bills would meet the equities of the case. By measures of exaggerated severity the holder himself would impair the value of the bills of exchange which he held. Acceptors who were perfectly solvent at the moment when tranquillity returned would perhaps not be so at the conclusion of the return trip, and perhaps neither the indorsers nor the acceptor would then be in condition to meet their engagements.

The crisis which you would have uselessly provoked would have destroyed many fortunes. You will say to me, perhaps, that if the right was granted to the holder to take recourse against all the indorsers they would be able themselves to wait; but such rights easily become duties. All the paper which happened to be in the banks would necessarily have to be sent back immediately. Without such action the responsibility of the directors would be involved. Is it necessary thus to put the indorser at the mercy of the holder? If the fact that the indorser has guaranteed payment of the instrument is put in the foreground in order to deduce from it that their obligation extends even to the point of guaranteeing the possibility of presentment (even in the case of vis major), I think that this is a presumption which goes far. It should not be forgotten that often the indorser can not even know into whose hands his indorsement has finally passed. Let me give you an example. Some one has indorsed two drafts on Warsaw. Railway traffic to that city is interrupted. One of these drafts has already been for some time at Warsaw and encounters no obstacle to its payment; the other, which has perhaps taken another route, does not arrive in time. Is this the fault of the indorser? There are many other reasons and many other cases that I might cite, but I fear to abuse your patience. We have felt that we ought to draw from them this conclusion, that the best solution would be this—that the holder shall not lose his right of recourse (as is the case to-day) and that the calamity shall produce only an extension of maturity; that the holder shall await the cessation of the causes of interference; and that then he shall be obliged, in conformity with the duties imposed upon him by the principle of the bill of exchange, to present the instrument for payment. In a great number of cases he will thus obtain satisfaction, and for instruments which remain unpaid he will have them protested and take the regular recourse.

To relieve him from all action seems to me to be contrary to the responsibilities incumbent upon him as holder of a bill of exchange. In favor of the system which we extol we are able to assert that recent experience has demonstrated that in practice it has met the test. I recall to you that several years ago the disturbances in Russia hampered the regular course of business. What was then done? The Imperial Government of Russia decreed that presentment might be delayed and protest drawn with the same delay. Instruments enjoying this favor were paid almost without exception. I am sure that the delegates of Russia are able to confirm this. Would the same result have been obtained if all these instruments had been thrown back upon the indorsers? I permit myself to appeal also to the delegates of France, to beg them to tell us what measures were taken at the time of the recent inundations in France. I think that they were similar.

Mr. Ernest-Picard declared that the French Parliament voted a law and the Government issued a decree relative to the presentment of instruments during the inundations. Information on the subject would be given to the conference.

Mr. Fischel continued thus:

The delegate of Italy has indicated to us the great difficulties which occurred at the time of the sad events at Messina. It seems to me, however, that in cases so extraordinary as that of the earthquake in Sicily the consequences are themselves of a nature so special that they should not be made the basis of the provisions of a new law referring to public calamities. There the two systems would have produced almost the same results, because the ruin was definitive. If the Italian law had already established the rules which we propose to-day, I think that the Italian Government would, within a period of a week or a fortnight, as soon as it was materially possible to approach the city



of Messina, have appointed notaries who would have been able summarily to establish the nonpayment of paper. Recourse would then have been open. If the Italian banks establish in their business to-day conditions which do not respond to the existing law, I think it is due solely to the fact that to-day all recourse is lost. With the new provisions the banks would hesitate, perhaps, to impose upon their clients obligations more harsh than those of the law. Mr. Vivante would not wish an earthquake like that of Messina to produce effects throughout the entire world. He will permit me to say that I do not agree with him. I also would wish to mitigate the effects for the other countries, but I fear that precisely so far as you permitted immediate recourse without preparation you would give a quake to all the indorsers of instruments drawn on a country which had been stricken by such a great misfortune.

Mr. Hammerschlag spoke as follows:

In order not to retard our work beyond measure, I will answer, for the moment, in only a few words the arguments of our colleague from Germany. Without doubt there is no solution of our problem which would be exempt from difficulties. But I think that those which would result from our proposition would not be so considerable as those caused by the plan of Mr. Fischel, who wishes that the party who finds himself to be the holder at a critical moment shall alone be stricken by the public calamity, while the party who has issued the bill of exchange remains altogether spared. Such a measure seems to me highly unjust, and I think it would have the consequence of a much greater number of failures than our project would provoke.

The situation of the indorser bound to reimburse the bill of exchange is not as serious as Mr. Fischel has said, because he will have his rights of recourse against his predecessors, and the drawer only will be afflicted in the end by the public calamity. It seems to me more just to reach the drawer, the author of the bill of exchange, than the holder, in whose favor militate all the reasons which Mr. Fischel has invoked in behalf of the indorsers. His means, for example, do not permit him to keep the bill of exchange in his portfolio until maturity, etc.

If the holder believes that the public calamity will not continue long, nothing will prevent him from waiting for a few days, after having obtained his certificate establishing the public calamity and before exercising his rights of recourse. Above all, I wish to maintain all my objections against an extension of the delays for presentment and protest in the case of a moratorium. I reserve the right of declaring myself more explicitly on this subject in the discussion in the section.

Sir Mackenzie Chalmers expressed himself thus:

The question raised by our colleague, Mr. Fischel, is of great importance, and I ought, I think, at this point to define the English position. There is among us a general principle ruling commercial law—*Lex neminem cogit ad impossibilia*. From this the holder has among us no absolute obligation; he is bound only to do his best. If he does not conform to the provisions of the law as to protest or as to presentment for payment or as to modification, he must prove that it was not his fault and that he has done what was possible. If he proves this, it suffices.

Mr. Simons said that, contrary to French and English jurisprudence, of which Mr. Lyon-Caen and Sir Mackenzie Chalmers had spoken, German jurisprudence did not accept the idea of a *vis major* personal to the holder of the bill of exchange, because the drawer and the indorsers, in promising that the bill would be paid in a certain place and at a certain date, guaranteed only the general possibility of presenting the bill at maturity at the place of payment. The individual situation of the holder did not concern the party liable on an instrument to order. This principle was inherent in the essence of the bill of exchange itself.

Mr. de Sampaio filed the following response:

The questions of the date and of the place where protest should be drawn should be regulated by the international law.

The form of protest should be left to conform to national legislation or to local usages.

Mr. Vivante asked that in the Italian response (p. 78), the word "talon" should be replaced by the word "allonge."

Question 29. (b) Should protests through the post office be admissible or not?

Mr. de Sampaio filed the following response:

Protests by means of the mail should not be permitted.

The question was referred to the sections without discussion.

Question 30. What should be the time limitation for suits: (a) Against the acceptor? (b) Against the drawer and the indorser?

Mr. Yáñez said that the legislation of Chile established a period of four years, but he was willing to approve a period of three years, which had obtained a majority in the response to the "Questionnaire." This delay ought to be the same for all the parties liable for the payment of the bill—that is, against the acceptor, the drawer, and the indorsers. The only exception which ought to be permissible would be for the benefit of the acceptor who should pay without cover by the drawer and the party who paid for honor.

Mr. de Sampaio filed the following response:

The period of prescription for actions relative to the bill of exchange ought to be five years.

Mr. Beichmann asked permission to replace, on page 82, the words "eight months" by "six months."

Question 30 was referred to the sections.

Question 31. From what time should the limitation be calculated?

Mr. de Sampaio made the following response:

This period should begin on the day of the maturity of the bill or of the last judicial act, unless there should intervene a sentence of judgment, or the debt should be recognized by a separate act.

Question 31 was referred to the sections.

Question 32. Should the party who has lost his recourse owing to the time limit have the right to summon the alleged debtors to court and cause them to swear off their claim?

Mr. de Sampaio filed the following response:

There is no inconvenience in leaving to the creditor the option of demanding the oath from the debtor to escape the effects of prescription of the bill of exchange.

The Conference decided to refer question 32 to the sections.

Mr. Simons proposed to add to the "Questionnaire" the following two questions:

1. What are the defences which may be set up by the law of exchange against the holder of a bill?
2. What are the essential particulars of a bill of exchange?

The president answered that the sections would be free to supplement the "Questionnaire" at their will.

#### B. THE PROMISSORY NOTE TO ORDER.

Question 33. In what respect should the form to be prescribed for promissory notes differ from that prescribed for bills of exchange?

The president said:

It does not belong to us here to decide the question whether it is necessary to regulate promissory notes to order in the convention which we are preparing.

We are able to discuss only in a general manner the regulation which ought to be established for promissory notes. The sections ought then to consider whether promissory notes ought also to be regulated by the convention.

Mr. Vivante said:

In Italy we have had a fortunate experience with a different system than that adopted by the German law. In my opinion, it will be opportune to deal at the same time with bills of exchange and promissory notes to order.

Mr. Concha said:

On this question and those raised in Nos. 34 and 35, we believe that the provisions relative to the bill of exchange ought to be applicable to the promissory note to order, except for the modifications which result from the lack of a drawee, exception being made for the provisions relative to acceptance and protest, which ought not to be required for the latter documents.

Mr. de Sampaio filed the following response:

The form of the promissory note to order differs from that of the bill of exchange in that it has no drawer, but only the first holder and the subscriber.

Question 33 was referred to the sections.

Question 34. What are the provisions regarding bills of exchange which should be made equally applicable to promissory notes?

Mr. de Sampaio filed the following response:

The rules for bills of exchange in regard to indorsement, guarantee, maturity, payment, and protest are in general applicable to the promissory note.

Question 35. What special provisions should the law contain concerning promissory notes?

Mr. de Sampaio filed the following response:

It does not seem necessary to prescribe special provisions, except the definition.

Questions 34 and 35 were referred to the sections

#### C. PRIVATE INTERNATIONAL LAW.

What are the rules of private international law which are applicable:

(a) To the legal rights of the signers of a bill of exchange or a promissory note?

(b) To the form of the obligation contracted by the signing of a bill of exchange or a promissory note?

(c) To the formalities to be fulfilled with reference to a bill of exchange or a promissory note to protect the rights which result from it?

(d) To compliance with revenue regulations?

Mr. de Sampaio filed the following response:

The capacity of the signers of a bill of exchange or a promissory note to order ought to be regulated by the national law of the signers.

The form of the obligations contracted in a bill of exchange or a promissory note to order ought to be regulated by the law of the place where the signature has been given.

The formalities to be fulfilled to preserve the rights which arise from a bill of exchange ought to be regulated by the law of the place where such formalities have been carried out.

The penalty for fiscal provisions belongs to the courts or the administration of the country where the bill of exchange or the promissory note should be passed upon or protested.

The president remarked that it was desirable to adjourn the general discussion of this question, which was agreed to.

The president announced the close of the general discussion. He did not think it opportune to study the question of the cheque in this conference.

Mr. Lyon-Caen inquired whether the uniform law would apply to all bills of exchange or only to international bills—that is, those drawn from one country upon another. It would be advantageous to settle this question in plenary session rather than in the sections.

The president thanked Mr. Lyon-Caen for his interesting observation and proposed that this question be discussed, with other questions of a general character, in a later plenary session. This was agreed to.

The president read a letter in which the Hungarian delegation presented a project for a uniform law, and announced that it would transmit promptly to the secretary copies of the project to be distributed to members of the conference.

The president then proposed to divide the conference into five sections, as follows:

Section 1: Argentine Republic, Bulgaria, France, Haiti, Norway, Salvador, Switzerland.

Section 2: Germany, Brazil, Chile, China, Italy, Montenegro, Russia, Siam.

Section 3: Costa Rica, Denmark, Great Britain, Hungary, Japan, the Netherlands, Uruguay.

Section 4: Austria, Luxemburg, Mexico, Portugal, Servia.

Section 5: United States of America, Belgium, Spain, Paraguay, Sweden, Turkey.

Mr. Renault proposed that the president should himself name the presidents of the sections, which was agreed to.

The president, in accordance with the desire of the conference, named as presidents the following:

Section 1: Mr. Lyon-Caen.

Section 2: Mr. Vivante.

Section 3: Sir Mackenzie Chalmers.

Section 4: Mr. Félix Mayer.

Section 5. Mr. Beernaert.

The president then read a plan of procedure, which the conference adopted provisionally. (See project annexed herewith.)

In reference to the committee on international private law, the president proposed that it should be made up of the delegates who had taken part in conferences at The Hague on international private law. These were Messrs. Kriege, Renault, Beichmann, de la Vallée Poussin, and Asser.

This proposition was adopted, and Mr. Kriege was designated as chairman of this committee.

It was decided that the sections should meet at 4 o'clock of the same day.

The sitting closed at 12.45 p. m.

#### PROPOSED PLAN OF PROCEDURE.

I. The conference shall be divided into five sections; each section will be constituted of the delegates of an equal or nearly equal number of States.

II. Each section shall select its president and "rapporteur."

III. The sections shall consider the questions which have been referred to them by the conference.

IV. The deliberations of each section shall be terminated by a vote. The vote shall be taken by States, each State having one vote.

V. The result of each vote shall be transmitted to the secretary of the conference by the "rapporteur." He shall indicate how each State has voted.

VI. The conference shall appoint a special committee of five members to consider questions of private international law. (Question 36.) This committee shall have the right to add to its numbers two members and shall select a chairman and a "rapporteur." In this committee each member shall have one vote.

VII. The chairmen and the "rapporteurs" of the five sections and those of the committee on private international law shall form, with the president of the conference, a central committee. This central committee shall have the power to add to its numbers, if it deems advantageous, three other delegates of the conference.

VIII. Each "rapporteur" shall communicate verbally to the central committee the summary of the discussions on the different questions.

IX. The central committee shall take account, so far as it considers desirable, of the votes given in the sections and shall present to the conference the result of its labors, either in the form of a plan or in that of resolutions to be adopted.

#### FIFTH SESSION, JULY 2, 1910.

President, Mr. Asser.

The session was opened at 4.30 p. m., and the journals of the first and of the second sessions were adopted.

The president announced to the conference that the consul general of Salvador at Antwerp had apprised him of the obstacles which the delegates of the Republic had encountered by reason of the illness of one of them, preventing them from taking part in the labors of the conference.

He had also received from His Excellency Mr. Sylvain a reply to the Questionnaire, and in addition a memorandum from the Government of Haiti had reached the secretary.

The responses of Brazil, of Spain, of Japan, and of the delegate of Servia to the Questionnaire had been distributed to the delegates.

Before passing to the discussion of the order of the day, the president proposed to add to the bureau, as one of the secretaries, Mr. Anginieur, attaché of the embassy of France. This was carried.

The president proposed to vote upon the plan of procedure which had been distributed to the delegates, with some modifications which he would submit to the conference. As the result of a wish which had been expressed by several delegates, he proposed to add to the central committee, which did not count among its membership any technical member, five delegates designated respectively by the five sections and belonging to the banking world. If the conference accepted this point of view, he would propose to assemble the sections at the conclusion of this session to proceed immediately to these selections.

Mr. Beernaert asked if it was understood that under the heading of banks were to be included the national banks.

The president having answered in the affirmative, Mr. Beernaert supported the proposition, which was adopted unanimously.

The president proposed, also, to increase from three to five the number of delegates which the central committee would have the power to add to its membership under article 7 of the plan of procedure. This was agreed to.

The president proposed not to include in the central committee the chairman of the special committee on private international law, as the result of the wishes of the latter. The work of the committee



being in effect independent of that of the central committee, it would be preferable that it might present its propositions to the conference directly and without intermediary.

Mr. Beernaert thought that it would be better to maintain a bond between the central committee and the committee on private international law.

Mr. Renault, while approving the proposition made by Mr. Asser, thought it might be possible to meet the views of Mr. Beernaert. The reason for the proposition of Mr. Asser was the difference which existed between the tasks of the two committees. The central committee had for its mission the regulation of a commercial matter; the committee on private international law was to seek to settle conflicts of law. The unity of which Mr. Beernaert spoke ought to be brought about in a committee on form, whose creation would be needed. It was indeed impossible that the central committee, composed of from 18 to 20 members, could formulate carefully its resolutions. It would be at the time when the committee on form should be constituted that what might be called a bond of personal union could be established.

Mr. Beernaert did not insist, but he remarked that such a committee would have only matters of form to deal with and would have no authority to make modifications in substance.

Mr. Carlin considered that Mr. Beernaert and Mr. Renault were, each from his point of view, entirely right. He asked if there could not be created an intermediary organ between the conference on the one side and the central committee and the committee for private international law on the other side. Such an organ would be able to harmonize the resolutions adopted separately by the two committees.

The president replied to Mr. Beernaert that the committee on form, while not exceeding its powers, ought to have a broad conception of its task. He thanked Mr. Carlin for his suggestion, which he would not fail to submit to the committee on form and which might guide it advantageously in its labors.

Mr. Beernaert asked if this committee on form would be at the same time a committee on coordination.

Mr. Lyon-Caen thought that a double question had to be determined: (1) What should be the power and the attributes of the committee on private international law? Should it concern itself exclusively with conflicts of law or also with other questions—for example, that of determining whether the law or the international convention should extend to all bills of exchange or should govern only those called international? (2) Should the resolutions of the conference take the form of a law or that of a convention? It seemed to him that one or the other of these questions fell rather within the competence of the central committee.

The president declared that this was his understanding. In regard to the first question raised by Mr. Lyon-Caen, he would, according to his promise, consult the conference in a later session to determine whether under the designation of bills of exchange the uniform law should include only bills called international.

Mr. Nagy asked a modification of article 9 of the plan of procedure. He considered that the central committee ought not to limit itself to a declaration of principles, but to formulate a definite international



law which was capable of being put in operation. The central committee ought, then, to be charged at once with preparing a project of law upon the basis of the work of the sections. It would discuss the principles, and the committee on form ought then to take up its work. Consequently, the conference ought to adjourn until the time when the central committee should have prepared a law, which the governments should have time to consider. He proposed, therefore, to modify article 9 as follows:

The central committee will take account, so far as it considers desirable, of the votes given in the sections, and will present the results of its labor in the form of a project of law to the conference, which will be adjourned until a period sufficient for consideration by the governments.

Article 9 leaves open the choice of the form in which the principles are to be set forth. There have been enough theoretical declarations from the rules of Bremen to those of Budapest.

The president believed that the proposition should be referred to the central committee. Personally he was of the opinion that the propositions should certainly take the form of a law, but he insisted that the conference should not prejudice a question belonging to the central committee. Before taking up the question whether the law should have the definitive form of resolutions an understanding ought to be reached on the principles to be formulated in such a law, since otherwise the debate would involve at once the form and the substance, to the great detriment of clearness.

Mr. Renault was opposed to the proposition of Mr. Nagy. In proposing the immediate adjournment of the conference, Mr. Nagy had made provision for deliberation by the Governments. But upon what would they deliberate if the elaboration of the project of law should be entrusted to the central committee? The conference ought also to consider that its adjournment, when the preparatory work was scarcely finished, would be a confession of impotence.

Mr. Nagy replied that the approval of an international law elaborated by the central committee would imply instructions, which he did not have. He asked, therefore, not the closing of the conference but, on the contrary, its continuance. A law ought to be of a character to be operative. The central committee would then define the principles of such a law and formulate a project, and then, when the Governments had examined this project, the Conference might be assembled anew and proceed to unification.

The president observed that the Hungarian proposition was a double one. To begin with, Mr. Nagy desired that the central committee should define not only principles but an actual project of law; in the second place he made a motion for adjournment. On this last point the president indorsed without reserve the words of Mr. Renault. As to the first question it was within the competence of the central committee.

Mr. Nagy declared himself ready to have this question taken up by the committee, which at an early sitting would be able to make it the subject of a report to the conference.

Mr. Beernaert was in accord with Mr. Nagy on the legislative form to be given to the results of the labors of the conference, but adjournment or even the suspension of the conference seemed to him absolutely inadmissible.

Sir George Buchanan said that he had already set forth the point of view of his Government. The imperial legislation not being capable of modification upon the points where there existed already a complete agreement throughout the British Empire, he preferred that the conference should endeavor to formulate the principles with which it might be inspired. If, however, the central committee should decide to give to the work of the conference the form of a project of law, he would bow before this decision on the well-understood condition that this would not in any manner bind the Government of His Majesty.

Mr. Carlin returned to the necessity, already indicated by the president, of passing upon the proposition of Mr. Nagy. The first part—adjournment of the conference—might be passed upon immediately by the conference. The second—what form should be given to the results of its labors, declaration of principles, or project of law—ought to be examined in a preliminary way by the central committee, which would make a report to the conference.

Mr. Nagy accepted the distinction proposed by Mr. Carlin. He proposed, consequently, that the conference pronounce at once on the question of adjournment.

The president objected that this question could not be profitably considered before the work of the central committee was known.

Mr. Renault insisted on the necessity of dissipating a possible misunderstanding. He accepted the distinction established by the president and Minister Carlin. The first part of the proposition of Mr. Nagy was unacceptable; the second was premature. Only at a later time would it be possible to define the form to be given to the results obtained. He proposed, therefore, to postpone the vote on this question until the time when these results should be known.

Upon the suggestion of the president Mr. Nagy supported this proposition of postponement.

The president read the plan of procedure as modified, and proposed its adoption. (See plan annexed herewith.) This was voted.

Mr. Corragioni d'Orelli asked, on behalf of the delegates of States which were not represented in the central committee, permission to follow their labors.

The president saw no objection to this. In conformity with article 7, which had just been voted as modified, he proposed that the sections reassemble immediately to name the technical delegates.

Upon the request of Mr. Renault the chairmen indicated the state of progress of their sections.

Upon the suggestion of Mr. Lyon-Caen, it was decided that the reports of the sections should be published and copies given to the delegates.

Mr. Carlin asked that the same course be pursued in regard to the proceedings of the central committee.

The president promised to lay the proposition before the central committee.

The conference, being consulted by the president upon the question whether it would concern itself not only with international bills of exchange, but also with those which were national, decided to refer this question to the central committee.

The session closed at 5.30 p. m.

## PROPOSED PLAN OF PROCEDURE.

I. The conference shall be divided into five sections. Each section shall be constituted of the delegates of an equal or nearly equal number of States.

II. Each section shall select its president and "rapporteurs."

III. The sections shall consider the questions which have been referred to them by the conference.

IV. The deliberations of each section shall be terminated by a vote. The vote shall be taken by States, each State having one vote.

V. The result of each vote shall be transmitted to the secretary of the conference by the "rapporteur." He shall indicate how each State has voted.

VI. The conference shall appoint a special committee of five members to consider questions of private international law. (Question 36.) This committee shall have the right to add to its numbers two members and shall select a chairman and a "rapporteur." In this committee each member shall have one vote.

VII. A central committee, which shall be presided over by the president of the conference, shall include the chairman and the "rapporteur" of each section, with five additional delegates, each of whom shall be designated by a section from the delegates representing banking houses or other technical delegates. The central committee shall also have power to add to its members five other delegates.

VIII. Each "rapporteur" shall communicate verbally to the central committee the summary of the discussions on the different questions.

IX. The central committee, after having heard the "rapporteurs" of the sections, shall pass upon the resolutions proposed by them.

The central committee and the committee on private international law shall present to the conference the result of their labors, either in the form of projects of law or conventions or in that of resolutions to be adopted.

## SIXTH SESSION, JULY 21, 1910.

President, Mr. Asser.

The session was opened at 3.45 p. m.

The minutes of the third, fourth, and fifth plenary sessions were adopted. The minutes of the sessions of the central committee were adopted in their entirety.

The president read letters in which Messrs. Beichmann, Ehrens-vard, and Cloos informed the conference of the departure of Messrs. Andersen Aars, Carlander, and Grundtvig. He also announced that Messrs. Kundert, Wieland, and Nobel had been obliged to leave.

The president opened the discussion on the resolutions of the central committee presented in the report of Messrs. Lyon-Caen and Simons. He expressed his thanks warmly for the completed and extended work of the "rapporteurs." This important work had been done in so short a time that the "rapporteurs" asked permission to retouch it later, if necessary. [Applause.]

Mr. Sylvain spoke as follows:

The delegate of Haiti begs to be excused for not having been able to participate continuously, as he would have wished, in the deliberations of the conference, having been called to Paris by the exigencies of his diplomatic functions. But he has kept in contact with the secretary's office and has thus been able to follow the work. Before giving his opinion on the important results accomplished in his absence by the central committee and its two eminent "rapporteurs," he desires to make a statement. In consequence of an error in transmission, still unexplained to me, but obvious, there has reached the conference a memorial from our Department of Foreign Relations which was not destined for you, but was rather, in my opinion, in the absence of more complete information, a memorandum addressed to the Secretary of State. The conclusion, nevertheless, deserves to be retained. It testifies to an admiration and a profound recognition of the promoters of your imposing assembly of jurists, as

well as of previous conferences—notably that of Brussels—which have prepared the way for this.

This appreciation, gentlemen, let me say to you in all sincerity, is fully justified by the inspiration with which your labors have proceeded. What is a draft, indeed? A marvelous instrument of credit or of exchange—the most flexible and the most convenient which has been invented to obviate the embarrassment of the transportation of money. Hence, to labor with a common purpose to fix and to simplify the rules which govern its use and circulation in a manner to make it a sort of international money—accepted universally under the guaranty of those who put their signature upon it—is for all countries which produce and consume of an interest so obvious that it is hardly possible to conceive of any one of them showing itself, I will not say refractory, but indifferent, to the principle of such an agreement. Haiti, less than any other country, even though circumscribed at present as to the field of her transactions, is able to appeal to the testimony of a past proverbially opulent and to the promises of a future with a perspective almost without limit. Everything which ought to contribute in the vast market of the world to facilitate exchanges and to develop credit will directly serve her cause.

Hence a powerful reason which, even in default of others, would have sufficed for our devotion with a warm heart to your work of international conciliation. But it seems to me that this work, accomplished by your tact and your reciprocal moderation, is on the way of complete success, your committee having had the art to conciliate and to inspire confidence in all interests. From the beginning it was in effect established that the task of the conference would have consisted above all, since the majority of legislative systems agree in the essential principles which govern the subject of the contract of exchange, in finding in the laws already in force the rules which had been justified by their practical efficiency, and the best solutions sanctioned by the decisions of the courts; in fortifying them with some special provisions resulting from an exchange of views between such competent economists as yourselves; and in addition, that is to say, upon points which, as differences of application are involved which are considered by certain states as matters of international regulation, to recommend, without imposing them, the solutions recognized as most favorable to the instruments of commerce, to the end that every state may adhere to our project of a convention without fear of a sharp upheaval in its legislative system or commercial usages, I do not see who can refuse his acquiescence.

It remains to us then to-day, it seems to me, only to sanction this happy agreement by fixing its terms; and you will find me, for my part, entirely disposed to this result, bringing to you the utmost good will which can be desired from a thinking voter.

The president, after having thanked the Haitian delegate for his declaration, drew the attention of the conference to the character of the resolutions. Although prepared in the form of articles, they did not represent a definitive project of law. He did not wish to restrain or limit the discussion, but thought proper to observe that the conference at present was not to occupy itself with the form, and that, on the other hand, the substance of the matter had already been amply discussed in the plenary sessions, in the central committee, and in the sections.

Sir George Buchanan made the following statement:

We have followed with profound interest the progress of the labors of the conference, and the discussions in which we have had the honor to take part have brought home to us more than hitherto the effect of the laws which govern bills of exchange in the different countries in the world, as well as the underlying reasons which have brought about the adoption and maintenance of these laws. We shall not fail to submit to our Government a detailed report on the whole of the proceedings of the conference, and to indicate at the same time those points where, in our opinion, the English law is capable of improvement. When the competent authorities have considered this report, His Majesty's Government will decide whether or no certain rules of the English law should be modified in accordance with the resolutions adopted by the conference.

However, it is our duty again to affirm that it is impossible for our Government to go further or to depart from the attitude which it has taken from the



beginning of this conference. It is no question of national pride or obstinacy which has given rise to this attitude, but the necessity of safeguarding the interests of our mercantile community. A law which governs more than 120,000,000 people, including the United Kingdom, the British colonies, and most of the States of the United States of America—without counting the vast population of the Indian Empire—can not be modified without disturbing long-settled commercial relations, and without creating divergences in legislation among the members of the Anglo-Saxon family.

It is possible that among the rules of English law there are some which are antiquated and inconvenient, but in its main lines our law does but incorporate the usages of our commerce. It is not an arbitrary law imposed by the legislature on the commercial community; the legislature has but given the sanction of law to the usages of our commerce and industry, and in modifying that law we should upset long-established customs. There are other reasons in the domain of law which raise equal difficulties. We have no separate *droit de change*. We have no tribunals of commerce. We draw no distinction between traders and nontraders. Our commercial law is an integral part of our common law, and it is the ordinary civil courts which give effect to its provisions in the same manner as they give effect to ordinary debts and obligations.

You can well understand, after what I have just said, that it is impossible for the British delegation to associate itself officially in the drafting of a proposed uniform law, when by their instructions they are forbidden to take any such undertaking into consideration.

But though we are unable to identify ourselves either with a draft convention or with a draft uniform law, we wish to be the first to congratulate the conference on the work which it has succeeded in accomplishing. We desire to pay a tribute to the charming courtesy and incomparable ability with which our illustrious president has guided our labors, as also to the high order of intelligence displayed by Messieurs Lyon-Caen and Simons in embodying the resolutions of the central committee, for submission to the conference, in a report which is a masterpiece of draftsmanship. Even for a country which like our own is unable to participate in a convention which consecrates the unification of the law of bills of exchange, it will nevertheless be of indisputable advantage to have to deal with only a single law, applicable to all the other commercial countries, instead of being confronted by a variety of diverse legislations.

If among the rules advocated by the conference there were several which we were obliged to resist, we have at all events the satisfaction of knowing that those rules were only adopted after they had been subjected to a rigorous examination at the hands of experts possessed of high authority in the field of jurisprudence, a fact which leads us to hope that these rules will realize to a large extent the hopes cherished by their sponsors and that they will effect not only a greater simplicity in the law on bills of exchange, but also an improvement in its operation.

Mr. Conant made the following statement:

Mr. President and gentlemen, I cordially join in the congratulations extended by other members of the conference to the central committee and its "rapporteurs" for the remarkably able and comprehensive document which they have presented in the project of law which is now before the conference.

In many particulars the provisions of the project follow those of the laws of Great Britain and of the United States, which took the initiative many years ago in seeking to bring about uniformity on this subject among their several colonies and States. In providing for the abolition of days of grace and for the extension of the time within which protest may be made, you have accepted two reforms which will be eminently acceptable to American bankers.

In accordance with my statement at the beginning of our meetings, there is great reluctance in America to undo the long and arduous work which has brought about uniformity in 35 American States, 4 Territories, and in Great Britain and her dependencies. The scope and policy of American laws differ in some respects from the systems of the countries of the Continent. We have no code of commerce distinct from the common law; we recognize no distinction between merchants and others who draw bills or sign notes; and we have no separate tribunals for dealing with commercial cases. Under these conditions our difficulties would be greater, if we should undertake to adopt a uniform law, than in countries where a long succession of laws and usages are based upon the existence of a special commercial code.

How great have been these difficulties, in framing the project of the uniform law, is indicated by the fact that in spite of the great skill of your distinguished "rapporteurs," they were compelled to leave no less than 23 points in the various articles to be governed by national legislation and practice or by the ordinary rules of the civil law.

In the United States, moreover, there is another obstacle to uniformity, in the fact that by the decision of the highest Federal tribunal, the Federal Government has no authority to legislate regarding bills of exchange, whether foreign or domestic. Such documents are considered in the nature of contracts, which are governed by State law, and only reach the Federal tribunals when conflict between the laws of the States requires interpretation and reconciliation.

Notwithstanding these difficulties in the way of complete cooperation by the United States in bringing about a uniform law, it will give me pleasure to report to the Federal Government and to bring to the attention of the organizations which have already done much to secure uniformity in the laws of the American States the project which may be adopted by this conference. I feel justified in assuring you that they will give the project careful consideration, with a view to adopting from it such improvements in their existing statutes as are not inconsistent with our system of law and of commercial practice. I beg to assure your excellency and the members of the conference of the sympathy of the United States in this effort to throw down the barriers built up by conflicting laws against the free movement of commerce and capital.

The president thanked Sir George Buchanan and Mr. Conant. He congratulated them upon the good feeling of which their words gave evidence.

Mr. van Gelderen made the following statement:

The responses given to the questions proposed by the Government of the Netherlands cover the entire subject of the bill of exchange. The solutions adopted have been inspired not only by the most advanced principles of modern legislation but also by the intention which is fundamental in the matter of the unification of laws—I mean that the international law should be essentially simple, and that it should carefully eliminate casuistry by seeking to settle all conflicts by the adoption of the rules which practice and experience have shown to us to be the most acceptable.

It is necessary that the bill of exchange should be a distinct instrument, of which the effects and the interpretation should leave no doubt, since the penalties attached to them are derived from the common law of obligations.

It is necessary that the form of the document should be the most simple possible and that the law should indicate its essential particulars.

It is necessary that the rights which the bill of exchange confers should be derived always from these particulars, and it is for this reason that there has been stricken out everything relating to cover and guaranty by separate document.

It is necessary that an instrument which produces effects of a legal character should contain in itself and in its particulars the reason for the actions at law which it allows.

The advantage obtained by such eliminations consists in the simplification of the law in practice—a fact worthy of attentive consideration.

At the same time, these eliminations do not antagonize commercial usages, in which transfer by account and the setting forth of particulars are steadily declining in importance.

We have concluded that it is not necessary to permit the clause, "without guaranty," either in the bill of exchange or in the indorsement, because we are of the opinion that the responsibility of the signatories should be uniform and equal for all and that the party who puts his signature on a bill of exchange ought to remain liable jointly and without restriction if the drawee does not pay.

This is why we have suppressed limited guaranty (by aval).

The general principle of the matter is that every person who signs a bill of exchange becomes a debtor to the holder, a subsidiary debtor in the case of nonpayment by the drawee or the acceptor, but a debtor jointly responsible with the cosigners.

The bill of exchange ought to be a document of presentment—that is, that the actions which spring from it can be exercised only after its presentment and that they are based upon the text itself.



I am pleased to state that the Argentine law will not be subjected to fundamental modifications by the international law which we are in process of formulating. The necessary modifications will be of small importance, because our code, dating only from a half century, is inspired by the German doctrines, and it may be said that it is these doctrines which have made the greatest headway in the practice of the law of exchange.

Further, the project which is submitted to us is not in any manner the expression of an individual will, but it is the reflection of the ideas expressed by the sections, by the central committee, and by the plenary conference itself. In this project each of us has collaborated and has submitted his own ideas, and it is the erudition and the recognized talent of the general "rapporteurs" which, in bringing together these ideas intelligently and methodically, have succeeded in presenting to us a report which could be adopted as the international law for all the countries represented in this conference (excepting, naturally, certain modifications, of local significance, which will be introduced by the legislative power of each nation).

It is true that each of us has done his duty, but it is not the less true that without the presidency of His Excellency Mr. Asser, so intelligent and often so very clever, we should have risked not reaching an agreement, and it is an act of impartial injustice which I undertake in declaring that in large part the work accomplished is due to him.

I will conclude, gentlemen, by begging you to express for the secretaries, who have labored so well and so intelligently, a vote of thanks, which, in my opinion, is so well merited. I propose that this vote shall be taken at our last plenary session.

Mr. de Sampaio said that upon the eve of the vote he felt that he ought to refer to what he had already said in the third and fourth plenary sessions as well as in the discussion in the fourth section. It had been impossible, because of his diplomatic functions, to follow all the debates of the central committee. In any case, excepting some modifications of detail, which represented the point of view of His Very Faithful Majesty, the King of Portugal, on certain points of the Questionnaire, he supported in a general manner the decision made to attain, in a broad spirit of conciliation, the project of a uniform law. Hence, while accepting the principles necessary in this law, he reserved at the same time the essential principles of the national law and declared that he would vote to submit the matter *ad referendum* to his Government.

Mr. de la Rica y Calvo declared that the Spanish delegation joined with pleasure in the warm congratulations addressed to the president, the central committee, and the "rapporteurs." Although the delegation had not taken direct part in the preparation of the advance draft of the uniform law, it hoped that this project would be acceptable in its entirety to the Spanish Government, for it did not differ essentially from the Spanish legislation on the bill of exchange.

The Spanish delegates felt bound, however, to make express reservations on two points contained in articles 1 and 57 of the advance draft. The code of commerce in force in Spain required in the bill of exchange the mention of the residence of the drawee, a condition which was not required in article 1 of the advance draft. The Spanish Code of Commerce granted to the holder of a bill of exchange the power to accept or not to accept a partial payment of the value of the bill, and this in a manner much more efficient and explicit than article 57 of the advance draft. The Spanish delegation considered preferable the provisions in force in Spain on these two points, the importance of which obliged them to formulate this reservation.

The general discussion was closed and the discussion of the articles taken up.

Mr. Beichmann, at article 7 (*bis*), thought that it was necessary to consider that there were other cases than that of incapacity where a signature is not valid, and cited the case where a signature had been obtained by coercion or by fraud. The Scandinavian law provided in general for the case where a signature for any cause whatever did not involve the liability of the signer, and he recommended the adoption of such a rule. Mr. Beichmann did not, however, present an amendment.

Mr. Lyon-Caen promised to bear in mind the observations of Mr. Beichmann.

### *Article 26.*

Mr. Beichmann thought that the first paragraph of the article did not express what it was intended to say. It seemed evident that the absence of the invitation of the domicile would have only the effect that the bill would be payable at another place than that where, according to its tenor, the payment should be made. The penalty to be imposed should, in his opinion, be that prescribed by the Scandinavian law—that is, that the payment should then be made by the acceptor himself, but at the place of payment.

Mr. Simons, the “rapporteur,” admitted that the form should be modified. On the substance of the question he was in accord with Mr. Beichmann.

Mr. Radoitchitch desired to go back to article 24. He was of the opinion that it ought to be possible for acceptance to be made on the allonge. There was no danger that it would be lost, for this was not in the interest of the holder.

Mr. Lyon-Caen did not attach great importance to this question, but he felt compelled to state that there would be a real danger in admitting acceptance on the allonge. It might be that it would be detached and affixed to another bill of exchange.

Mr. Fischel was of the same opinion as Mr. Lyon-Caen. The allonge was always in danger of being lost, and in such a case, if the acceptance was affixed to it, the bill might be presented again for acceptance.

Mr. Radoitchitch replied to Mr. Lyon-Caen that ordinarily the allonge bore a copy of the bill of exchange, and that in this case it was impossible to annex it fraudulently to another bill of exchange.

Mr. Radoitchitch, however, did not wish to present an amendment.

### *Article 35.*

Count Ehrensvard recalled the doubts he had expressed in the Central Committee on the subject of the expression *déconfiture* (embarrassment). The “rapporteurs” had given an interpretation of it which to him aggravated the difficulty. He did not wish to invoke discussion, but *déconfiture* was not known to the Swedish law, and it would be necessary to define its significance.

The president took the liberty of saying that, in order to attain the object of the conference, all the States ought to make concessions. If *déconfiture* was not known to the Swedish law, the uniform law would not have the effect of introducing it there.

Count Ehrensvard feared that it would be necessary to modify not only the law on bills of exchange, but also the national legislation on bankruptcy.

Mr. Beernaert supported his criticism on the form of article 35. He thought that the uniform law ought to define *déconfiture* and suspension of payment, and to this effect presented the following amendment:

In case of failure or a condition of insolvency established by a legal decision.

Mr. Simons replied that an effort would be made to find a different form based upon the observations which had been made. He stated, however, that German commerce was strongly in favor of not limiting the cases assimilated to the condition of bankruptcy. In harmony with Mr. Beernaert he admitted that conflicts might arise, but it would belong to the courts to settle them.

Mr. Beernaert insisted on a definition of suspension of payment and of *déconfiture* in the uniform law. It was the more necessary, since the "rapporteurs" declared that they did not mean its establishment by a judicial decision.

Mr. Carlin observed that *déconfiture* was not known in Switzerland. He interpreted article 35, as did the president of the conference. In his opinion, the uniform law would not impose *déconfiture* upon the laws of countries where it was unknown; but if the uniform law recognized it in other countries, the Swiss people who were holders of bills would only profit by it.

Mr. Beichmann reserved his opinion as to the form of paragraph 1. He wished to call attention to the fact that the interpretation which had just been given seemed to him somewhat dangerous. He thought that in effect it was sought that the facts which in France were embraced in the term *déconfiture* should invoke the same effects in the countries where this designation, employed in the French law, was not known.

Mr. Fischel said that banking and commerce would applaud the provisions of article 35. Already the German Wechselordnung contained a similar article, which did not involve a definition of suspension of payment. To have the fact established by a judicial decision demanded much time, and it was important that recourse should be had as quickly as possible to avoid the consequences of an insolvency which might in the meantime afflict an obligee. Where it concerned suspension of payment recourse took place between banks within 24 hours. If the case of suspension of payment was not admitted the cases of bankruptcy would be increased, because all holders of bills of exchange having book claims at the same time would find it to their interest to instigate proceedings in order to exercise recourse in respect to bills of exchange. This would not be advantageous to anyone. If it was desired to elucidate by means of additions the expression, "suspension of payment," the result would be a text with still more restrictions. This increase of clearness in the law might have the effect of depriving the holder of the right, now quite plain according to the existing German law, of exercising immediate recourse as soon as a suspension of payment is known. In 37 years of practical experience he did not recall any contest on the character of suspension of payment.

Mr. Beernaert said that Mr. Fischel was a supporter of article 35 because it was vague, but this was exactly the reason for which Mr.

Beernaert did not favor it. The innovation was interesting, but the whole matter could not be left to the free decision of the courts.

Mr. Lyon-Caen promised that in the final draft, account would be taken of these observations. He confessed, however, that he did not understand very well the objections of Mr. Beernaert to the expression, "suspension of payment." The definition ought not to be embodied in the uniform law, but in the national laws on bankruptcy. As to *déconfiture*, he felt his opinion shaken and would be disposed to renounce it and to support the British system of the definitive enumeration of the cases assimilated to bankruptcy—for example, the case of the unsuccessful attachment of the goods of the acceptor.

The president proposed to refer the decision to the discussion of the project of law. The "rapporteurs" would then be able to take into consideration the observations which had been made.

Count Ehrensvarð said that the interpretation of Mr. Carlin would tend to calm his fears, if he was convinced that it was correct; but he thought there was contradiction between paragraphs 1 and 2—the first rendering obligatory what the second permitted as optional. He suggested the following form:

In the case of bankruptcy or suspension of payment of the acceptor or in the case where *déconfiture* is established by an attachment.

Mr. Radoitchitch said that article 35 gave the right of recourse to the holder of the bill of exchange only in the case of the bankruptcy of the acceptor. He thought that this same right should be recognized on behalf of the holder in case also of the bankruptcy of the drawee. Between the issue of the bill of exchange and the bankruptcy of the drawee only a few days might elapse and during this small space of time it might not have been a physical possibility for the holder to present the bill for acceptance. It would be the same in the case also where it was forbidden, by express stipulation inserted in the bill of exchange, to present the instrument for acceptance until after a certain time. In these two cases where he could not be reproached with any negligence, the right of recourse of the holder ought to be recognized.

Mr. de la Rica y Calvo stated that an equivalent of *déconfiture* was known to Spanish legislation, but reserved speaking of it until the discussion on the project of law.

#### *Article 65.*

The president drew the attention of the conference to a form of notice contained in the most recent law on the bill of exchange—that of Brazil of 1908. This form was included in the mention, "registered letter."

#### *Article 78.*

Mr. Chung-Hui-Wang made the announcement that the delay of six months set forth in the second paragraph was unacceptable to China. He made the following proposition:

In a case where the States are not able to agree on the declaration of the delay of prescription for legal actions, it seems desirable to adopt as a uniform period of delay the average of the periods fixed by all the States, in order to bring this average to the unit most practical for adoption.

Mr. Simons thought that this calculation would be very difficult, especially as several countries had no fixed period, but a "reasonable time." He would prefer to make the delay longer for China.

Upon the suggestion of the president, Mr. Chung-Hui-Wang declared that he would advise his Government of this question, and while awaiting its response would withdraw his proposition.

The other articles and the general and special resolutions were adopted without discussion. Mr. Renault having proposed to assemble in plenary session at 5 o'clock on the morrow, it was so voted.

The session was closed at 6 p. m.

SEVENTH SESSION, JULY 22, 1910.

President, Mr. Asser.

The sitting was opened at 5.15 p. m.

The president imparted to the conference a communication from the delegate of Nicaragua, stating that he was detained at Paris and prevented from being present at the session.

The president pointed out that the conference had approved the contents of the resolutions annexed to the report of the general rapporteurs. It remained to discuss and vote upon the provisions relative to international private law as well as the draft of the uniform law, based upon the resolutions, with modifications of detail, voted at the preceding sitting, and the advance project of the convention which was to be concluded.

Before passing to the discussion of these various matters, it was necessary to return to the text of article 35 of the resolutions, which had aroused criticisms in the sitting of July 21. The principal difficulty arising from the term "embarrassment" (*déconfiture*), an expression technical in France, but whose scope was less understood elsewhere, it had been proposed to the conference to strike it out and to replace it by a more precise enumeration of the cases where, according to French jurisprudence, *déconfiture* arose. The rapporteurs had proposed the following language:

In case of bankruptcy, suspension of payments, even if not established by a previous judgment, in case of ineffective execution against his goods, and also in case the acceptor has lost the right to wait until maturity against the holder, the same immediate recourse as in case of default for nonpayment may be exercised.

The conditions under which bankruptcy or loss of the right to wait until maturity may occur shall be determined according to the law of the country where acceptance is made.

It shall be left to national laws to assimilate to the cases provided by the first paragraph of the present article other cases where the insolvency of the acceptor is legally established.

The bankruptcy of the drawer, even in case of nonacceptance, shall not give to the holder the right to exercise a recourse against the indorsers and the drawer.

The first and last paragraph of this text will form Article 63 of the advance draft of the law. It will be necessary to take account of paragraphs 2 and 3 in the advance draft of the convention.

The president proposed the immediate discussion of this revised text.

As Mr. Beernaert and Count Ehrensvard declared that they were willing to accept the new draft in substance, with reservations as to form, the article was adopted.



The president presented for discussion the provisions on international private law and the adoption of the report of Mr. Renault. He recalled that it was 30 years ago since he first attended international conferences and 17 years ago that he had occasion to meet there his friend, Mr. Renault. It was always agreed that if Mr. Renault was rapporteur of one of these assemblies, it was assured of success. It had become a sort of international proverb, which revealed the established expectation of seeing Mr. Renault in the breach. To such a point had this gone, that it made one forget sometimes what efforts and what talents were necessary to play this rôle. He wished to propose to the conference not to be guilty of this forgetfulness and to express to Mr. Renault the gratitude and admiration which his work inspired among all. [Loud applause.]

Mr. Renault declared that there was need, in spite of the eulogies which he considered excessive, for the indulgence of the conference in relation to the report which he was going to read. There were some typographical errors, relatively few in number, considering the very short time within which the printing office had done the work, and there were faults of expression, due to the haste with which the rapporteur had been obliged to accomplish his task. It was proper to make at once the explanations relative to the provisions on international private law which were found in Articles 83 to 85 of the advance draft of the law. In the part of the report which treats of the advance draft of the law and which explains these provisions were to be found the direct work of the Commission on International Private Law. Afterwards, he would read the "General Considerations," in which were set forth the general principles which governed the matter studied by the committee.

Article 83 was adopted after Mr. Renault had read the passage of the report referring to it. He drew attention to Article 15 of the advance draft of the convention. The latter was not at the moment submitted to the conference, but it was not possible to separate the article in question from Article 83, of which it formed the indispensable complement.

The president approved this method of procedure.

Article 84 was adopted and also Article 85, which Mr. Renault remarked was only a necessary consequence of the preceding article.

The president announced the adoption of all the provisions to be inserted in the advance draft of the uniform law. It remained to vote on the final form of this advance draft.

Before giving the floor to the rapporteur for reading his report, the president declared that it was understood that, apart from the suggestions already made by the delegates in the course of the deliberations of the conference, the respective Governments would have the right to propose still other modifications and additions to be made in the two advance drafts.

After Mr. Renault had performed his task, the president inquired if it was necessary to vote upon the advance draft of the law article by article or if it should be voted upon all together.

Mr. Beernaert asked permission to make a general observation, but desired first to join in the well-deserved homage rendered to Mr. Renault. He had taken, 30 years ago, the initiative in the reform which was on the point of achievement. He was, therefore,



particularly gratified to see such progress realized. In everything which concerned himself he was ready to accept the advance draft in the aggregate, and even more so since it appeared from the words of the president that the governments would retain the liberty of modifying or supplementing it.

Mr. Radoitchitch desiring to present remarks upon several articles it was decided to vote article by article. The articles which did not arouse any observations during the reading were adopted.

In article 3 Mr. Radoitchitch declared that the second paragraph was in contradiction with the third paragraph of article 2 of the resolutions of the central committee, which the conference had adopted in its last sitting. This latter text was thus expressed:

It may be drawn upon the drawer himself, in which case, it shall be considered as a promissory note to order, and shall not be to the order of the drawer himself.

According to this text, any bill of exchange which is drawn upon the drawer himself ought to be considered as a promissory note. Moreover, it was forbidden to the drawer to draw this sort of a bill of exchange to his own order. However, paragraph 2 of article 3 of the advance draft provided, (1) that the drawer had the option to draw the bill of exchange upon himself and to his order, and (2) that only this type of bill of exchange should be considered as a promissory note. It was evident that it was necessary to eliminate this contradiction. For his own part he preferred the text of article 2 of the resolutions of the central committee, which do not permit the drawer to draw a bill of exchange on himself and to bearer.

Mr. Simons said that there was an error either in the resolutions of the central committee or in the advance draft. The error was due to the manner in which the promissory note had been discussed. The minutes of proceedings did not always give, perhaps, very clearly, the idea of these different shades of meaning. It was important to allow a draft to be drawn on the drawer himself. There were many advantages in this, notably, when a banking house had branches abroad. The analogy of such a draft, with the promissory note, is evident, but it should not be concluded that this involved assimilation. All the rules applicable to one of these subjects are not applicable to the other; thus, there was an advantage in permitting duplicates for bills drawn on the drawer, but the promissory note did not admit of such duplicates. It was not necessary to say that the promissory note and the bill of exchange, where the drawer was also the drawee, were identical things, but he cheerfully recognized that the second paragraph of article 3 was at first sight in contradiction with paragraph 3 of article 2. He asked that time be given to the rapporteurs to find an expression giving satisfaction to Mr. Radoitchitch.

It was thus decided.

In article 11 Mr. Radoitchitch declared that from the moment that one proceeds in the third paragraph of this article by way of enumeration, it would be necessary, in order to render this enumeration complete, to add at the end of the first phrase and after the word "drawer," these words, "or to their guarantors."

The rapporteurs did not oppose this modification, and the article thus modified was adopted.

In article 18 Mr. Radoitchitch declared that when it has been said in an express manner in the first paragraph that the bearer, to whom the bill of exchange has been indorsed by power of attorney, ought to be considered as the agent of the indorser, the third paragraph was useless, because its contents resulted from the general principles of the law of contract or agency. Its place was rather in a commentary on the law than in the law itself.

Mr. Lyon-Caen replied that without doubt this paragraph could have been stricken out, but with the object of accuracy, he thought it preferable to present to the governments a very complete project.

The article was adopted.

In article 24 Mr. Radoitchitch suggested that according to article 5 acceptance was expressed by the word "accepted," followed by the signature of the drawee. The drawee ought to sign, but ought he also to write himself the word "accepted"? He thought not, but he wished to be sure on this point. He begged the president to furnish the necessary explanation to the conference.

Mr. Lyon-Caen remarked that there was a general rule which applied both to the bill of exchange and to all particulars, which was that the signature should be found there, but that the formula need not necessarily be written by the party himself.

In the second paragraph of article 24 there was an error. It ought to read as follows:

The acceptance must be in writing on the bill of exchange itself. It shall be expressed by the word "accepted," or any other equivalent word, followed by the signature of the drawee. The mere signature of the drawee, placed on the face of the bill, shall constitute acceptance.

An acceptance need not be dated. The date shall, however, be stated in the case of a bill payable at a certain time after sight, or which must be presented for acceptance within a delay fixed by a special clause.

Acceptance given on an allonge, on a copy, or by a separate document shall not be deemed to bind the drawee by virtue of the bill of exchange.

In reference to article 29 Mr. Radoitchitch remarked that the language appeared to him too broad. He thought that it would be clearer if positive terms were used. In his opinion it would be preferable if the article was expressed in the following terms:

The drawee who has placed his acceptance on a bill of exchange has the right to erase it so long as he has not given up the instrument. He shall lose this right, however, when he has in writing informed the holder or an agent of the holder that he has accepted.

The president felt that there would be serious danger in redrafting a section in plenary session. He proposed to refer the text to the committee on form, and it was thus decided.

In article 31 Mr. Radoitchitch observed that in the second paragraph it was said that acceptance for honor might be made by a third party, even by the drawee who had defaulted in acceptance "or by a person already liable on the bill of exchange."

This person already liable could not be either the drawer or an indorser. By their previous signature they were already bound toward the holder. If they signed as acceptors for honor, they would not increase in any respect the security of the holder, which was along in issue. This person already liable might be either the acceptor or the giver of a guaranty when they had limited their obligation. But as acceptors for honor they would increase the security of the holder only in the measure where they were not yet

liable by virtue of their previous signature. Consequently, he thought that it would be better to cancel the last words of the second paragraph of article 31, "or by a person already liable on the bill of exchange."

The president said that this concerned something more than a change of form. If the question was to be discussed, he would ask the conference to reopen the debate on this point.

Mr. Simons did not think it necessary to return to it. The law established an alternative acceptance for honor by which either a third party or a person already liable on the bill of exchange might accept for honor.

Mr. Radoitchitch did not insist, and the article was adopted.

On article 35 Mr. Radoitchitch declared that he had an observation to present identical with that already made with reference to acceptance for honor. He did not see the advantage to the holder of contenting himself with the guaranty of a signer of the bill of exchange. As he had already explained, the latter, being already a signer, was not in a position to increase the guaranties of the holder.

Mr. Lyon-Caen was anxious to have this provision retained. It was true in general that the guarantor was not already bound personally by the bill of exchange. A contrary case, however, might be found. An indorser might set up disabilities against a negligent holder and would be protected by a prescription of six months. If he gave his guaranty to the acceptor, the situation would be quite different. This indorser who has become a guarantor would no longer be able to invoke similar disabilities and the prescription which he could plead would be three years. It was then true, in conformity with the observation which the president had made, that there were cases where the guaranty given even by a cosigner of the bill, increased the security of the holder. The French Government, in its response of the Questionnaire, had adopted a different point of view, but the central committee had joined in the view of Mr. Asser.

On article 39 Mr. Radoitchitch said that provision had been made alongside legal holidays for "a day on which payment can not be demanded." This species of halfway holidays existed only in France. They were not known in other countries. Why then speak in the uniform law of these days of which only French legislation took account? The place for it was in the convention.

The president said that this would reopen the discussion on the substance of the law. He asked if the conference wished to authorize it. This was approved.

Mr. Lyon-Caen took note of the fact that the criticisms were addressed to the expression, "a day on which payment can not be demanded," and which was not a legal holiday. This case was not special to France. In England, notably, there were days which were not holidays, but on which the payment of debts in general, and that of bills of exchange in particular, could not be demanded. To avoid confusion, it had been thought best to express this explicitly in the law.

Mr. Radoitchitch insisted that this expression would raise difficulties in Servia.

The article was, however, adopted.

Mr. Radoitchitch declared that he did not understand article 54.

Mr. Simons said that to give greater definiteness to the idea of the conference, the article should read thus:

The protest must be made at the residence of the drawee, or of the person required to pay, or of the case of need, or of the acceptor for honor.

In article 67, paragraphs 2 and 3, Mr. Radoitchitch wished to see determined more exactly the day on which protest should be drawn.

Mr. Simons recalled that the central committee had decided to leave the question for the judgment of the courts. If, for example, a railroad strike broke out between two towns, it was possible that protest could not be drawn on the morrow of the day when payment should have been made. It was, therefore, a question of fact to be settled by the courts.

The article was adopted.

In article 86 Mr. Radoitchitch considered the expressions "sum to be paid" and "sum certain" as useless and superfluous.

Mr. Lyon-Caen did not see any inconvenience in speaking of the "sum" without qualification, which was approved.

Mr. Beernaert asked that the discussion on the advance draft of the convention be postponed to a later sitting.

Mr. Sylvain wished to prolong the session. Adjournment was voted by 13 votes against 11, the conference to reassemble on the next day at 10 o'clock a. m.

The sitting closed at 6.30 p. m.

#### EIGHTH SESSION, JULY 23, 1910.

President, Mr. Asser.

The session was opened at 10.30 a. m.

The order of business called for the discussion of the project of a convention presented by the committee on private international law and the committee on form.

Mr. Renault, before beginning the reading of his report, desired to present some preliminary observations. He set forth that the project of the convention had for its object to carry into effect the articles of the resolutions presented by the central committee, which provided for leaving to national laws the power to regulate certain points. To prepare the project of the convention, the committee on private international law had been compelled, in view of these reservations, to examine two questions: (1) In what manner should the national laws for the right to modify or to supplement certain parts of the uniform law? (2) In what measure should such articles, thus modified or supplemented, have effect in other countries of the Union?

The discussion was opened upon article 1 of the project of the convention.

Mr. Carlin, in the name of the delegation of Switzerland, made the following declaration:

My Government would have preferred, for reasons too extended to set forth at present, that the project of a uniform law should have been made the direct object of our agreement, that is, that it should have come into force by the very fact of its ratification by the convention, or, in other terms, that it should have had a character strictly international instead of national. For reasons whose force I do not dispute, the system has been adopted which is proposed.

to us to-day. Speaking for myself personally, I make no formal opposition to it; I venture even to express the hope that my Government will be able to support it; but the instructions which the delegation of Switzerland has received are so precise upon this point that I have not felt able to dispense from formulating the present observation, which I desire to see inserted in the minutes of the sitting of to-day, and I shall be obliged to the president if he will consent to give it formal recognition in the name of the conference.

The president recognized the declaration of Mr. Carlin.

Mr. Beernaert desired to obtain from the "rapporteur" some explanations on the method to be employed by the various governments to introduce the uniform law into their legislation. In his opinion, the governments would be bound by the convention and would be obliged to adopt the entire law en bloc. The convention would reserve to them only the power to promulgate in a supplementary law the provisions modifying or completing the law which the latter authorized them to make.

Mr. Renault replied that the committee had intentionally refrained from imposing upon the governments a uniform procedure for the introduction of the law into their legislation. The committee had not taken a fixed position on this point and each country remained free to promulgate the law in the manner it chose within the limits marked out by the convention. It was certain that the States might employ the method of procedure proposed by Mr. Beernaert. It was not certain that all countries would be able to follow this procedure and to introduce the law, without any modification, into their legislation. In France, for instance, it would be difficult to promulgate in terms article 1 of the law, which imposed the obligation of the designation of the bill of exchange, when it was the idea of the government to offer a choice between the insertion of the clause to order or the designation.

Mr. Beernaert emphasized the great danger of this manner of proceeding. The parliaments would be able then, according to Mr. Renault, to discuss the law article by article and to amend it. Could it be hoped, under these conditions, to obtain uniformity?

Mr. Renault said he could only express his personal opinion. In the present condition of things, parliaments would be able to modify the law, but only—and that was important—in respect to the articles where remission to the national law had been decided upon. The other articles should be adopted as they were. It was said in the report that the governments would be responsible for the translation which they would make of the law. It was the same with the modifications which, according to the convention, they had power to introduce into it. They would be responsible for the conformity of these modifications with the convention.

It should not be forgotten that the conference had undertaken a work absolutely new. It was certain that it would encounter difficulties hitherto unknown. It was not, then, surprising that some hesitation was manifested. The next conference would see if it was not possible to give more complete satisfaction to Mr. Beernaert.

The president declared that in the sittings of the central committee, he had supported a system similar to that which was proposed by Mr. Beernaert. The system of the rapporteur was in the nature of a compromise and the governments would have the right to regulate, as they understood it, the procedure of the promulgation of the law,



upon their own responsibility as far as the convention was concerned.

Mr. Beernaert insisted on emphasizing to the conference the dangers of this freedom of action. He did not, however, make any formal opposition.

Mr. Renault pointed out that the system proposed by the delegation of Belgium was not without some drawbacks. If it was adopted, the parties interested would find themselves confronted by two laws—the uniform law and the supplementary law. Would not this introduce great complications into commercial legislation, which ought to be as simple as possible?

Mr. Sylvain thought that the discussion should be summed up. The governments would be allowed to modify the law on the points reserved. Whether they would employ this power to modify the law itself in order to have only one law or whether they would consign these modifications to a supplementary law, the conference could not say.

Mr. Radoitchitch made the following declaration:

The question as to the scope of the uniform law is so important that it deserves our close attention. Ought the uniform law to lay down rules on bills of exchange without any distinction, national or international? Or, on the contrary, ought its compulsory effect to be restricted only to international bills of exchange and to international promissory notes to order?

If it was only a question of expressing a wish, I would not hesitate to support the first system. But when the present condition of things is considered, it is plain that for the moment it is prudent to limit the scope of the law to instruments which are international. The reasons for my opinion are these:

1. It is the difficulties which the bill of exchange encounters in its international circulation which have developed the need of a unification of laws. It is to remove these difficulties that we are here. As is said, with reason, in the report presented to the conference in the name of the committee on private international law, and of the committee on form:

"It would be natural for an international conference to deal only with international operations and to disregard operations whose effects are limited to a single country. The latter operations do not directly affect foreign countries. It is in the former cases that the diversity of laws produces serious inconveniences and that the different States feel an imperative necessity of getting rid of this divergence as far as possible. If in some countries the law does not meet the new needs of commerce, those countries can blame only themselves if they do not adopt legislation more perfect in character."

The conference is bound to take into consideration international needs and not to remedy the ulterior inconveniences of such a state of things. Complications will certainly result if there exist in each country two concurrent but different laws on the bill of exchange—the uniform law, and the national law. But how does this affect the conference? It is for the legislator of each country to decide whether he prefers to maintain this complication or to avoid it by adopting the uniform law in place of the national law. Each country should be able to care for its own interests.

2. Has the conference authority to formulate the laws which govern the interior legal relations of the States? In public international law there has been promulgated as a fundamental principle the absolute right of each independent State to regulate, freely and without any interference from outside, its purely internal affairs. Does not the mere assertion of the right to frame a project of law for internal affairs involve a certain degree of impairment of this great principle?

3. Little habits are relinquished with difficulty. How, then, can it be hoped that the different States will renounce at a stroke laws which have been tested, in order to adopt the uniform law which has certainly been elaborated by eminent men, but, unfortunately, in haste, and which for this reason alone may contain gaps. It would, in my opinion, be much wiser to introduce the uniform law into the legislation of different States only as an international convention, designed to regulate the legal relations arising from the bill of ex-



change in the international field. It is necessary to leave to time the work of bringing about complete uniformity. If we proceed in this manner, there will be much more chance that the law which we propose will not remain in the condition of a project only. I speak in the spirit of the wise proverb, "Who grasps all, loses all."

It is not impossible, moreover, to distinguish international bills of exchange from those which have a national character. International bills will be those which are drawn in one country and payable in another. These bills of exchange will be subject, from all points of view, to the national law; but if they enter into international circulation—that is, if they are accepted, indorsed, or guaranteed abroad—they will also be subject to the uniform law, but only in so far as concerns such acceptance, indorsement, or guarantee. The bill of exchange itself, considered as the basis of operations which have the international character, in the same manner as the *Grundwechsel*, should be considered, so far as its validity is concerned, according to the national law and at the same time according to the uniform law. It ought to be considered as valid, and with it all the particulars which have the international character, if it is framed in conformity with one of these laws.

The president thanked Mr. Radoitchitch for his communication. The idea of making a distinction between national and international bills of exchange had already been rejected by the conference and the central committee, so that it seemed useless to bring it again under discussion.

Mr. Beernaert asked that the words "apply there" (*s'y appli-quent*), at the end of paragraph 2 of Article 1, be replaced by the words "are in force there" (*y sont en vigueur*).

The president thought that, from the Netherlands point of view, that modification would involve some inconveniences. The laws of the mother country were not in force in the colonies; there were similar laws which applied there similar provisions.

Mr. Beernaert did not insist.

#### Article 2.

Mr. Beernaert asked permission to make a general observation, which applied to a considerable number of the articles of the convention. To reach an agreement, it had been found necessary to temper certain general prescriptions by the authority given to each State to introduce into them legislative exceptions. To express this idea the word "decide" (*décider*) had been employed, which did not seem to him a very happy choice. A law did not decide; it directed or prescribed; and when states were authorized to make a law they were authorized to "prescribe" it. He asked that this word be substituted for "decide," and thought that the rapporteurs would not make any objections. It concerned simply a question of form.

Mr. Renault was not convinced of the necessity of this modification, but did not formally oppose it.

The modification was adopted.

Articles 2 and 3 were approved.

#### Article 4.

Mr. Beernaert asked that the words "statement of a pledge" be replaced by the words "stipulation of a pledge."

Mr. Renault thought that the form which he proposed was of a character to avoid any misunderstanding. It ought to be understood that a mere reference implying a pledge should be considered

as invalid. The indorsement itself subsisted and transferred the property.

Mr. Beernaert did not insist.

Articles 4 and 5 were adopted.

### *Article 6.*

Mr. Beernaert asked that the words "such letters" be replaced by the words "these letters." This was adopted.

Articles 7 and 8 were approved.

### *Article 9.*

Mr. Beernaert pointed out that, from the Belgian point of view, this article was very important. The conference had decided, by the application of the maxim *locus regit actum*, that the forms of protest should be regulated by the national law, but in regard to the declaration which might take its place the convention proposed certain conditions which detracted from the rules fixed by the Belgian law. This declaration, according to Article 9, must be written on the bill itself and inscribed on a public register. These requirements were excessive. What was important was that the date of such a declaration should be established beyond a doubt, and it was to national legislation that it belonged to prescribe the measures to be taken to this end. He proposed, therefore, that paragraph 1 should end as follows:

by a declaration having a definite date, the forms of which shall be regulated by the national law of the place where it is drawn.

Mr. Renault observed that it seemed to be necessary to specify the forms of such a declaration. It involved in substance replacing the protest by a formality unknown to several legal systems, and it was natural that it should be surrounded with certain precautions, the more as the convention being open it might be supposed that some legislations might not furnish on this subject all the guarantees needed to avoid fraud and possible collusion. Finally, the obligation of writing the declaration on the bill had been recognized as necessary by the experts.

The conference, which had adopted Article 63 of the resolutions of the central committee, had, moreover, already pronounced on the principle of the provision, and it seemed difficult to reconsider it to-day. The Governments would be informed of the objection made by Mr. Beernaert, and the later conference would be able to decide in what degree it would be possible to meet his views. There was occasion, nevertheless, to remark that the argument drawn from the provisions on this subject contained in the existing Belgian law would not have weight when a law was being prepared destined to replace it.

Article 9 was adopted.

### *Article 11.*

Mr. Renault read the part of his report relative to this article, which referred to Article 63 of the draft of the law.

Mr. Simons said that the conference had decided upon the modification of this article and had directed the rapporteurs to present the new form, which he read as follows:

*Article 63 (new Article 62), first paragraph.*

In case of bankruptcy, suspension of payments, even when not established by a previous judgment, in case of ineffective execution against his goods, and also in case the acceptor has lost the benefit of the time limit against the holder, the same immediate recourse as in case of default of acceptance may be exercised, after the drawing of a protest for nonpayment.

This article was adopted.

Article 11 of the draft of the convention was approved, as well as Articles 12, 13, and 14.

*Article 15.*

Mr. Beernaert noted that this article provided that each State had the power of refusing to recognize the validity of the obligation assumed in the matter of a bill of exchange by one of its subjects, incompetent under the national law, but competent under the law of the country where the obligation was entered into. It was understood that this power must be the consequence of a law.

Mr. Renault replied that that went without saying. The form proposed had the advantage of not obliging countries which already had provisions of law on this subject to frame new ones.

*Article 16.*

Mr. Beernaert agreed with the framers of the draft when they said that absence of the stamp ought not to involve nullity nor disabilities. He did not think that he could follow them when they suspended the exercise of rights arising from the bill until the payment of the stamp taxes. He proposed to strike out the second paragraph. The solution proposed was contrary to the principle adopted—that the absence of the stamp should not prevent the signers of the bill from being legally bound. It was useless to suspend their rights until payment of the stamp taxes and during an uncertain period of time.

Mr. Renault thought that the proposed solution was equitable. Any idea of disability or nullity was discarded, but the interested party was told, "Before exercising your right pay the stamp taxes." Similar provisions had been made in other matters, notably in France, in regard to the rights of authors. The author was protected if he deposited his work. In case of failure to deposit he was not deprived of his right, but the exercise of such right was suspended until the formality had been fulfilled.

The president thought that the word "only" might lead to confusion. Would it not be thought that it was desired to prevent the States from enforcing the provisions of fiscal laws by penalties?

Mr. Dantschow was of the opinion that paragraph 2 was superfluous and that in any case the word "only" might be interpreted in the sense that the convention forbade the States to punish by fines violations of the fiscal law.

Mr. Renault thought that no doubt was possible on the subject in a convention which treated only of private law. He would accept, however, the substitution of the word "nevertheless" (*toutefois*) for the word "only" (*seulement*).

This was agreed to, and article 18 was adopted.

### *Article 19.*

Upon an observation of Mr. Beernaert, who considered the last phrase of this article to be lacking in clearness, Mr. Renault proposed the following form:

The contracting States reserve for themselves complete liberty to determine to what extent the provisions of the law may apply to these documents.

In regard to article 20, which was approved, Mr. Beernaert felt that he ought to refer to the observations which he had presented at the beginning of the session as to the modifications which the States might introduce into the law.

Article 21 was approved.

In regard to article 22, the president thought that the States should be allowed to sign the convention up to the first deposit of ratifications, which had been often done at The Hague. This was agreed to.

The order of business called for the discussion of the draft of the final protocol.

Mr. Renault explained that the committee on form had felt that it ought to place at the head of this protocol the names of the delegates who had taken part in the discussions. This would show that the drafts submitted to the Governments were the work not only of diplomats and jurists, but also of experts specially competent—business men and bankers.

The president announced that Mr. Rahusen, the delegate of the Netherlands Government, who had been prevented by sickness from taking part in the labors of the conference, hoped to be present at the session of Monday.

Mr. Renault felt that he would interpret the wish of the entire conference in expressing his great satisfaction for the recovery of Mr. Rahusen. No one would be more happy than he to see him resume his place among the delegates.

In regard to the recommendations proposed to the conference, the president thought that he ought to announce, although he had not been officially authorized to do so, that the Netherlands Government would be happy to endeavor to carry them out. It was quite possible that it would choose the month of September, 1911, as the date of the meeting of the next conference.

The proposed recommendations were adopted.

The president desired to ask the opinion of the conference on the question of the publication of the documents and resolutions of the conference. The final record which had just been discussed would be submitted to the Governments. It would seem that it would be proper that this document should not be published without the reasons which had led to its adoption. Certain Governments would perhaps desire such a publication to be preceded with special observations. It was important, then, that an understanding should be reached with a view to avoiding premature publications which, being

incomplete, might misrepresent the work of the conference to the public. It would be possible, perhaps, to fix a maximum delay, after which the publication need not be delayed.

Mr. Kriege did not doubt that, although diplomatic conferences were secret in principle and their records and documents could not, consequently, be published without the authority of the interested States, the Governments represented at this conference, while maintaining this principle, would give their consent to the publication. It was of general interest that the work of the conference should be submitted to public criticism. From this point of view the method indicated by the president seemed to be entirely practical, as well as the proposition to defer the publication in any case until the month of October.

Mr. Renault considered also that it would be proper to leave the delegates time to prepare the reports which they must make to their Governments.

As the result of the observations of Mr. Beernaert and of Sir George Buchanan, the conference made the recommendation that the drafts be published at a period to be fixed by the Governments represented not later than October 15, 1910.

The next sitting was fixed for July 25, at 4.30 p. m.

The session terminated at noon.

#### NINTH SESSION, JULY 25, 1910.

President, Mr. Asser.

The session opened at 5 o'clock.

The president announced to the conference a communication from his excellency the Duke de Calvello, Minister of Italy, from which it appeared that his Government, with the object of preventing the failure of any delegate of Italy from signing the final protocol, by reason of the absence of Mr. Vivante, who was detained in Italy by urgent business, had named him as delegate to the conference in order that he might sign said document.

The president announced also that the absence of Mr. Schneider, first delegate of Russia, was due to illness.

Mr. Brenning and Mr. Corragioni d'Orelli were also, to their great regret, prevented from taking part in the session.

As several other delegates were not able to sign the protocol at the session, his excellency the minister of foreign affairs would give an opportunity to do so later, and had decided that the protocol should be concluded on the 1st of October next.

The president begged the conference to give authority to the secretary's bureau to approve the minutes of this session as well as those which were not yet approved. This was agreed to.

The president invited the delegates to sign the final protocol. When this ceremony was concluded, the president took the floor, and spoke as follows:

Gentlemen, you have signed the final protocol of this conference, and you are now on the point of dispersing. You are justified, in my opinion, in feeling satisfied with the work accomplished. It is the first time that a universal conference, composed entirely of delegates of governments, has succeeded in reaching an understanding concerning an important part of commercial law, and we



are able to say, without any exaggeration, that the results obtained give the right to hope that your object will be attained.

After serious labors for more than four weeks, preceded and prepared in many countries by a thorough exchange of views between the men who are most competent on this subject, after discussions which have been often animated, but always courteous and bearing the impress of a warm desire to agree, agreement has been reached between the delegates of a great number of States of different parts of the globe upon the basis of an advance draft of a law and an advance draft of a convention, which have been adopted by the conference to be submitted to the consideration of the Governments.

Although it is to be regretted that the delegates of several powers whose co-operation seemed to us very valuable have felt, for special reasons which we fully respect, that they could not at present accept these acts of the conference, we are happy to learn that it follows from the explanations which these honorable colleagues have thought proper to give us at our sessions, that the great utility of the work which engages us is not misunderstood by their Governments, and that the latter are entirely disposed to examine seriously, and with due consideration of constitutional requirements as well as of certain commercial customs which it seems difficult to modify, if it will be possible for them to establish, in a certain measure, harmony between their national law and the uniform law. Already a desire has been manifested to indicate to us certain points with regard to which modifications of the national law might be proposed, and I venture to hope that with regard to matters for which it would be difficult for them, if not impossible, to establish uniformity, an understanding concerning the solution of conflicts of law might without great difficulty be realized.

In the meantime the honorable delegates of these States have placed their great qualifications at the service of our conference; they have taken a considerable part in our labors; they have contributed to elucidate many points which up to the present were obscure, and they have given evidence of a conciliatory spirit, which we fully appreciate.

Even for the States which accept the uniform law the uniformity will not be absolute. It has been felt, with regard to a certain number of points, that the power ought to be left to the national law to derogate from the uniform law or even to accord to the national legislator entire freedom of action, as, for example, with regard to the form of protests.

Let me add that the conference has acted with wisdom in respecting the liberty of the national legislators to the extent where this could be done without impairing the principle of our work of unification. It is possible, nevertheless, that the small number of divergences to which I allude may gradually disappear.

I do not doubt that the movement in favor of the unity of commercial laws will make great progress under the influence of the unification of the law on bills of exchange. This will be a genuine advantage for commercial relations. At the same time this movement will produce an effect which will be keenly appreciated by all the friends of peace—it will contribute to tighten the bonds of good feeling between the peoples.

The bill of exchange, circulating freely through all the countries of the globe, regulated everywhere by the same laws, an instrument of universal credit, representing an international money, bearing signatures from which flow a common obligation upon the basis of a solidarity regulated everywhere in the same manner, will be, so to speak, the symbol of the solidarity of interests which unite the nations. It will strengthen in all minds the conviction that the people have a common interest in opposing every attempt to check by discord and acts of violence the peaceful development of their commercial and industrial resources.

And even if—which God forbid—it should be still possible in our times that, under the influence of human passions or of a mistaken judgment with regard to the requirements of national interest or national honor, peace should be interrupted, we shall henceforth be sure that, thanks to the generous principle adopted by the second peace conference and sanctioned by the powers, the international bill of exchange would always be able to circulate freely and that the obligations contracted by the signers would be everywhere considered as sacred and inviolable.

You have, gentlemen, expressed the wish that a new conference may be convoked by the Government of the Netherlands to decide definitively upon the projects of the convention and of the uniform law relative to the bill of exchange and the promissory note and to deliberate on a uniform law in regard



to checks. To my great gratification I have also heard the proposition made in the committee on form, that the conference should express at the same time the desire that, to facilitate these deliberations, the Government of The Netherlands should be requested to employ the method of procedure followed in the preparations for the present conference. I do not believe myself too rash in affirming that the Government of the Netherlands will not refuse to yield to this desire, ratified by the conference. May the other governments have the kindness to facilitate the task by sending without too much delay the responses to the new Questionnaire (relative to the check), in order that the synoptical table of the responses may be presented in season to the delegates of the powers.

It will be well, I believe, to follow also in the next conference the system adopted in the present one as to the order of work. This system, in that respect which involves the division of the conference into sections, has been applied for the first time, and it is the general opinion that, thanks especially to the zeal and tact of the chairmen and rapporteurs of the five sections, it has worked well.

Nevertheless, whatever may be the system which is applied in the future, what it is essential in any case to preserve as one of the indispensable elements of the success of our labors are the general reports to the conference. On this occasion also the excellent reports, summing up in clear and definite manner the resolutions proposed, in explaining their meaning and motives, anticipating possible objections and meeting them in advance, form the most important portion of the records of the conference.

Framed according to the method which has been created—if I may venture to thus express myself—by our eminent colleague, Mr. Renault, and applied by him with such happy results in an entire series of international conferences, they serve at once to inform the conference on what is proposed to it by the committees, to enable governments and parliaments also to understand the scope of the projects, and, finally—after these have been given the force of law—to explain to all those who have to put them in force, and in the first place to the courts, the true meaning of these provisions. They constitute the international exposition of reasons (*exposés des motifs*), of which the advantage is still greater than that of the parliamentary documents exchanged between the participating States on the occasion of the examination of the conventions. Often parliamentary documents only refer back to the reports. While rendering well-deserved praise to the secretaries of the conference for the remarkable zeal with which they have usually been able to frame the minutes of the sessions, it can not be denied that these minutes can not supply the place of the reports. Among the causes of this undeniable fact, that the minutes do not always disclose to the reader the true reasons for decisions made, may be included the circumstance, known to us all, that these resolutions are often the result of compromises which have been arrived at outside the sittings. The rapporteur is informed of them and he is able, to the extent that he deems wise, to give explanations on the subject of these quasi-diplomatic negotiations. Negotiations of this character will remain indispensable so long as agreement can be established only with the consent of all.

Will the powers one day consent to establish for everything which concerns these uniform laws, with the reservations necessary in the interest of the sovereignty of the States, an international parliament, composed of delegations from the national parliaments, with authority to legislate on these special matters? Who knows what the future has in store for us?

In the meantime we shall do well to labor by availing ourselves of the instruments which are at our command and to render our international conferences as fertile in practical results as is possible for us.

The first condition which should be fulfilled in order that this result may be obtained is that the conferences should be composed of men of ability, animated with the desire to obtain results. The conference which has been sitting here has had, thanks to the excellent selections made by the powers, the great advantage of seeing this first condition fulfilled in the most brilliant manner. I consider it an agreeable duty to say to you all, gentlemen, how much we appreciate that you have been willing to devote several weeks of your valuable time to the labors of the conference. I am sure that you will not have occasion to repent it.

These thanks apply especially to the presidents and the rapporteurs of the five sections and to the general rapporteurs of the central committee, of the committee on international private law, and the committee on form. If the

conference decided to replace the system of committees by that of the discussion in sections, it nevertheless felt that two special committees should be provided for, one for questions of international private law, and also the committee on form. These two very important committees worked under the direction of his excellency Dr. Kriege, first delegate of the German Empire, whose indefatigable zeal and devotion to the cause of international public as well as private law are so well known to us.

I am happy to address also the warm thanks which are due to them to his honorable collaborators of the committee on international private law, former members of The Hague conferences, especially charged with regulating this subject, who, with the general rapporteurs and his excellency, Mr. Carlin, the minister and first delegate of the Swiss Confederation, and with the president of the conference, have made up the committee on form.

Our conference has had the advantage of being assisted in its labors by two excellent secretaries general. We have all keenly appreciated the services rendered by Baron de Heeckeren and Mr. Delvincourt, who during all these weeks have never failed to put themselves at the disposition of the conference in the most courteous and untiring manner.

Under their intelligent direction the secretaries, Messrs. Alphand, Catalani, Edhem Bey, Anginieur, Gaus, Donker Curtius, and the assistant secretaries, Messrs. Jonkheer, van Asch van Wijck, Goeman Borgesius, Jonkheer Bosch Chevalier de Rosenthal, Oppenheim, and Van Ryckevorsel, have acquitted themselves of their task with a zeal and devotion which merits all our thanks.

The great number of our sessions, often two a day, have rendered this task sufficiently heavy, and we are only the more appreciative of the work which they have accomplished.

I do not feel able, gentlemen, to terminate this session without having thanked you from the bottom of my heart for all the good will which you have shown for your president, and for the consideration and indulgence with which you have not ceased to surround him. I shall preserve a very pleasant memory of our common labor.

Now, gentlemen, after having thanked their excellencies, the ministers of foreign affairs and of justice, who have done us the honor to be present at this session, I am ready to adjourn if no one asks the floor.

Mr. Carlin took the floor and spoke as follows:

Mr. President, honorable presidents, and my honorable colleagues:

On the occasion of our first meeting I had the honor to propose to you to ask his excellency, Mr. Asser, to accept the presidency of our conference. To-day, at the moment of terminating our labors, I think I ought to take the floor to express in the name of all our manifold thanks.

First, gentlemen, I am certain of being the interpreter of our unanimous sentiments in asking you to request our president to transmit to the Government of The Netherlands, of which several members are present, our very warmest appreciation of the hospitality which has been accorded to our sittings.

Next comes, gentlemen, the expression of our profound gratitude toward our illustrious president. If our labors have terminated in a result which, putting false modesty aside, we may consider as eminently satisfactory, we owe it in great part to the care with which Mr. Asser had prepared the ground for us as well as to the eminent qualifications, the never-failing courtesy, and (when it was necessary) to the firmness with which he has guided our debates. These excellent qualities of our president have, besides, had the effect of inspiring us in our relations with each other with that spirit of conciliation, with that good will, and that reciprocal cordially which will enable us to preserve forever the happiest memories of this conference.

Gentlemen, I have not yet finished; I have not exhausted the list of our debts of appreciation. There is the bureau of secretaries. It would be unjust that, in spite of all which has already been spoken in its praise by our president, that I should not make reference to it. We have keenly appreciated the excellent services rendered by the faithful secretaries-general and by all the members of the secretaries bureau of the conference. Secretaries-general, the secretaries, and the assistant secretaries, accept our thanks, gentlemen, in the name of us all!

The secretaries' bureau and the rapporteurs have been skillfully seconded by the National Printing Office. On many occasions it has accomplished prodigies of labor and skill in order to lay before us within the necessary time the

texts without which our debates would have been sharply checked. To it, also, gentlemen, our thanks ought to be given.

Finally, let us not forget the "Nieuwe of Litteraire Societeit," which so liberally opened to us the doors of its magnificent edifice. It has contributed its share to the success of our labors. The Club of the Plein has been for us a rallying point. After long and sometimes fatiguing sessions, it has been there that we have been refreshed, and there also, as the result of an interchange of views, less formal than at a session, that many differences of opinion have been smoothed out and reconciled.

Mr. President and gentlemen, it is with a heart satisfied and full of gratitude that we separate, with the hope of finding ourselves here again in a new conference which, it is our hope, will come to crown the work of that which closes to-day.

Mr. Kriege spoke as follows:

Gentlemen, as representative of one of the two powers which proposed our conference, I wish to add a few words to the thanks which Mr. Carlin has thus expressed in the name of us all to the Government of the Netherlands.

It was for excellent reasons that the Governments of Italy and Germany addressed to the Government of the Netherlands the request to take the initiative in our conference. We are unanimous in recognizing that The Hague is the true center of the development of international private law. Here sits the commission for international private law, which by its excellent labors has prepared in so fruitful a manner the international conferences. It is here that a valuable experience has been obtained with regard to the institutions and all the details which are indispensable for such a conference. It is here—last, not least—that Mr. Asser lives, the president of this commission, who by his profound knowledge of law, by his consummate skill in directing assemblies, and by his admirable talent for avoiding by proposals always ingenious that differences of opinion should prevent realizing an agreement—who combines in an extraordinary manner all the qualities that could be wished for the presidency of such a conference. All these circumstances seemed to us to guarantee that the assembling of the states at The Hague could terminate only in a happy result. The success which has been obtained proves that we were not deceived.

Gentlemen, we have taken the first step, which can not fail to be followed by the second. As for myself, there is no doubt that if, after some time, we re-assemble anew at The Hague, we shall arrive at a definite agreement, and that we shall then be in a position to present to the world the first universal codification of one of the most important subjects of the civil law. Thus, in bidding you adieu here, this adieu is implicitly and explicitly *au revoir*.

No one asking the floor, the president terminated the sitting at 6 o'clock and declared closed the Conference for the Unification of the Law relative to the Bill of Exchange and the Promissory Note.



#### IV.—PROCEEDINGS OF THE CENTRAL COMMITTEE<sup>1</sup>

FIRST SESSION, JULY 6, 1910.

Chairman, Mr. Asser.

The sitting was opened at 10 o'clock a. m.

The chairman delivered a short speech, in which he welcomed the members, and expressed the hope that they would succeed in reaching agreement on the points referred to the committee for discussion.

In compliance with article 6 of the rules of the conference, he moved the appointment of five delegates to be joined to the committee. The following persons were consequently appointed: Messrs. van Gelderen (Argentine); de Langaard Menezes (Brazil); Nagy (Hungary), with M. Sichermann as substitute; Count Ehrensvärd (Sweden) and Schneider (Russia).

In compliance with the resolution of the conference, the delegates of states which were not represented on the committee were invited to be present at the sittings.

The honorary chairmen were requested to attend the sittings, and the chairman and secretary of the private international law committee were granted the same right.

The chairman moved to enter upon the discussion of the questions directly referred to the central committee by the conference without having been passed upon by the sections, while awaiting the reports or proceedings of the sections. Such was the case with questions 1, 2, and 3, as well as the question whether the convention, or the uniform law, should deal with all bills of exchange, without distinction, or should deal merely with international bills. The chairman suggested that the last of these points, proposed by Mr. Lyon-Caen, should be immediately discussed.

Sir Mackenzie Chalmers moved to reserve the question till the end of the debates of the central committee.

Mr. Lyon-Caen pointed out the influence that the solution of this question might have on the course of the debates, and insisted upon immediate consideration of it.

The chairman stated the question referred to as follows:

Should the uniform law apply to all bills of exchange or merely to bills drawn in one country on another?

Mr. Lyon-Caen agreed to the chairman's criterion, and recalled that in the beginning of his book on the English Act of 1882 on Bills of Exchange, Sir Mackenzie Chalmers stated that uniformity of legislation can only be realized in respect to international bills. The committee should not ignore the fact that the greater the extent of the

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<sup>1</sup>The committee consisted of the following members: Messrs. Asser, chairman; Lyon-Caen and Simons, rapporteurs; Carlin, assistant rapporteur; Fischel, van Gelderen, Mayer, Hammerschlag, Nagy, Beernaert, de Langaard Menezes, Cloos, Ernest-Picard, Chalmers, Jackson, Vivante, Wurth-Weiler, Jitta, Schneider, Ehrensvärd, and Osman Halim Bey.



domain of the uniform law the greater would become the difficulty of attaining uniformity.

On the other hand, the policy would not, as a matter of fact, lead to a simplification of legislation concerning bills of exchange, but would tend to make it more complicated. All the national laws would remain in force and, in addition to them, there would be a common law for international bills.

Consequently the uniform law should apply to all bills of exchange without distinction.

Mr. Beernaert pointed out that many bills drawn in a country and made payable in the same country could be indorsed in foreign countries. These could hardly be denied the character of international bills of exchange. He declared himself a supporter of a law of the widest scope.

Mr. Hammerschlag seconded Mr. Beernaert's opinion.

Mr. Lyon-Caen sought to show that the character, either national or international, of the bill of exchange ought to be fixed in compliance with the conditions of its issue.

Mr. Carlin agreed with Mr. Lyon-Caen's opinion. From a theoretical standpoint, the distinction between a national and an international bill of exchange was simple and easily recognized. However, he felt that from a practical standpoint it would be preferable to insert no distinction in the uniform law.

Mr. Simons considered the distinctions as being of little use. If the national laws on bills of exchange are too divergent to allow an unconditional unification, there is no doubt that the greatest difficulties would arise in regard to international bills. By leaving aside the national bills one would attain neither a uniform law on exchange generally nor a uniform law on international bills of exchange, but merely a convention on the conflict of laws.

Mr. Vivante saw in the solution advocated by Mr. Lyon-Caen an impairment of the practical scope of the law. The option suggested by Mr. Lyon-Caen would be availed of by all the States, and would lead to superimposing a new law upon existing national legislation.

Moreover, it should be recalled that the banking firms owning national bills and securities not discountable in foreign countries would find in case of internal financial crises no relief abroad. International solidarity, growing out of the simultaneous existence of national and international bills of exchange, would be powerless to exert its influence, a consequence which should not be the outcome of a uniform law.

Mr. Fischel considered the distinction suggested by Mr. Lyon-Caen as not very practical. Sometimes it was very difficult to ascertain the place of issue. For instance, two places located in different countries often bear the same name. The distinction involved less inconvenience in England, owing to the fact that a stamp had to be fixed on the bill previous to its issue.

He appreciated Mr. Vivante's observation as a very proper one. National bills going often abroad, the suggested distinction would lead to the issue of bills of a second order and would not conform to existing practice. The uniform law, to be of benefit, should apply to all for all.

Mr. Nagy insisted on the necessity of making only one law, without distinction between national and international bills. Some countries

would agree to the law just as it should be; others would agree to it only for international bills.

Mr. Lyon-Caen stated that the discussion indicated an agreement concerning the necessity of a uniform law extending to all bills of exchange.

However, as it does not seem possible to prevent States from enacting for international bills laws embodying the rules framed by the convention, it would be better to grant to them expressly the right to adhere to said convention.

The chairman observed that adhesion to an international convention, binding the parties, could not be assimilated to the creation of an internal law, always subject to further changes.

Mr. Fischel said he considered the option suggested by Mr. Lyon-Caen as involving a danger for the uniformity of laws which the conference wished to realize.

Mr. Lyon-Caen then made the following suggestions, in compliance with the observations previously set forth:

1. The uniform law should lay down rules applying, without distinction, to all bills of exchange, either payable in the country of issue or payable elsewhere.

2. The States should not be given the right to limit their agreement to the uniform law to bills of exchange payable in a country different from that of their issue.

The chairman inquired if it was necessary to vote a resolution excluding, as a matter of principle, from the benefit of the convention such States as might be inclined to agree to the law only with respect to international bills of exchange.

Mr. Lyon-Caen replied that, to his mind, the question was not of framing the text of a law, but of directing the committee's labors in a proper direction.

Mr. Vivante said he thought that if Mr. Lyon-Caen's proposal were carried it would lead to the creation of two rates of exchange, one applying to national and the other to international bills.

According to Mr. Nagy, the partial adhesion of a State to the convention would be preferable, from the standpoint of general interest, to total abstention. He suggested, therefore, that there should not be established between national and international bills of exchange a distinction which could now be found only in Great Britain and in the United States. He was in favor of adopting the first part of the proposition of Mr. Lyon-Caen, and of modifying the second part so that the United States should be granted the right to limit their agreement to the regulation of international bills of exchange.

The chairman suggested that the proposal should be referred to the committee on private international law, to which it properly belonged, and from which later it might come back to the committee.

Mr. Carlin moved an immediate vote on Part I of Mr. Lyon-Caen's proposal.

The chairman stated that Part I was unanimously carried, and that Part II had been referred to the committee on private international law. He declared the discussion of question 1 of the Questionnaire opened, and suggested that it should be answered affirmatively in respect of the promissory note and negatively in respect of the cheque.

This suggestion met with general assent.

Mr. Würth-Weiler set forth the wish of the fourth section, that another conference should within a short time deal with the cheque, in case an understanding was reached in regard to bills of exchange.

The chairman replied that, according to custom, recommendations are taken under consideration only after the resolutions have been attended to.

He then submitted for discussion the second question of the Questionnaire.

He stated that the committee was unanimous on the necessity of achieving the draft of a law or of a convention. But in order to succeed, and so as not to confuse discussion of the principles with discussion on mere matters of form, it would be necessary to lay down first the principles or rules on which the law or the convention should be based.

Mr. Nagy recommended the method of parliamentary procedure—first, general discussion; then, detailed discussion, article by article. The Governments would not be able to give definite instructions until the conference should have framed the draft of a law.

Mr. Vivante seconded the chairman's proposal. But he asked by what means the rules adopted by the central committee could be converted into the draft of a law.

The chairman said that a resolution could not at present be adopted on this subject. It would be proper, for instance, to declare that the central committee should remain permanent after the adjournment of the conference.

Mr. Vivante asked to whom would be confided the work of drafting the conclusions.

The chairman replied that it could be intrusted to some members of the committee and be reported back afterwards to the latter.

Mr. Schneider then stated that, in the opinion of his Government, a first conference should lay down the principles, and the task of a subsequent conference should consist in drawing up a final draft on the basis of these principles and of a preliminary draft made by a special commission.

Mr. Lyon-Caen said he considered that a general agreement had been reached upon the following policy:

The central committee should not limit its study to questions of a general character, but should adopt conclusions on all questions of some importance, especially those that had been inserted in the set of questions.

According to the opinion of Mr. Carlin, the present conference should be competent to decide upon a draft to be framed by the central committee. This draft, once approved by the conference in a plenary sitting, should be submitted to the various Governments for examination.

The chairman stated that question 3 was within the province of the committee on private international law.

On the chairman's suggestion, the central committee appointed as rapporteurs Messrs. Lyon-Caen and Simons.

The sitting was ended at 12.30 o'clock p. m.

SECOND SESSION, JULY 7, 1910. (MORNING SESSION.)

Chairman, Mr. Asser.

The sitting was opened at 10 o'clock a. m.

The chairman first expressed his thanks to the rapporteurs of the five sections, whose memoranda had just been distributed, for the considerable amount of labor they had done. The conclusions set forth by them should prove of the greatest value to the central committee. The chairman had just been looking into the reports, and was pleased to note the spirit of conciliation with which the sections had been animated. It was an unmistakable proof of the strong desire of all the delegates to come to an agreement.

He then submitted for discussion the fourth question of the Questionnaire:

Question 4. Should the law require:

- (a) Designation as a bill of exchange?
- (b) The indication of the amount drawn?
- (c) That remittance had been made from one place to another?

The chairman, in respect to the insertion in the law of the requirement of designation as a bill of exchange, had noticed that only one section (No. 2) had proposed to approve this requirement without restriction. The four other sections had favored provisions aiming to reach a compromise. The groundwork of these provisions should be to intrust the national laws with the whole or a part of the question.

There was competition on this point between three systems. The Hungarian system, the most liberal, aiming to leave to internal legislation the power to restrict all the conditions of validity enumerated by the uniform law, and, consequently, not to require, under penalty of nullifying the bill, the designation expressly required by the German law. A second method would permit reaching a similar result. The uniform law would make no statement concerning the obligation of such a designation, and would, implicitly or explicitly, intrust to national legislation the power to prescribe it or not. Lastly, the central committee would have to examine the suggestion made by the first section, and urged by the Swiss delegation, that the obligation to make the designation should be placed in the law, but that each State should be given the power to prescribe that, in the absence of an express designation, the clause "to order" should be sufficient for the validity of a bill of exchange.

The rapporteurs of the sections advised the central committee of their conclusions on this point. (Vide the reports.)

Mr. Carlin recommended specially to the committee's attention the suggestion made by the first section. He pointed out that this resolution had been unanimously adopted by section 1, which had also provided for the communication among the States taking a share in the convention of their respective laws dealing with the obligation to make the designation and the power to substitute for it the clause "to order."

The chairman stated that the Swiss proposal had attracted him at first, but that, once he had reflected upon it, it seemed that it involved in practice several inconveniences. Amongst other questions,

it might be asked what the countries which should make use of the power reserved for them by the said proposal should decide with respect to the drafts which did not bear the clause "to order" ?

Mr. Nagy set forth the proposal made by the Hungarian delegation. According to this, the contracting States should have the right not to require some of the conditions of validity prescribed by the uniform law. This solution would have the important advantage that it could be adopted by the countries which kept within the narrowest limits their requirements concerning the form of the bill of exchange, as was the case in the United States and Great Britain.

The Swiss proposal was of a very restrictive character, and its adoption would cause great confusion in countries which, like Hungary, recognized bills payable to order which were not bills of exchange, especially the commercial assignment, which did not admit acceptance—that is to say, the acceptance of which was not guaranteed by recourse.

It seemed to Mr. Nagy that a full assimilation of the clause "to order" to designation as a bill of exchange, from the point of view of the validity of the document, would involve serious inconveniences.

Mr. Simons pointed out that the assimilation of these two expressions by the uniform law was not in question. If the plan suggested would have the effect of compelling the States to adopt the two systems, Mr. Simons would fully agree with Mr. Nagy upon the inconvenience of such a solution.

Mr. Carlin explained that the proposition made by section 1 reserved to the different countries the power to substitute the obligation of the clause "to order" for designation as a bill of exchange. Germany and Switzerland would very likely not exercise this power, and the law would on this point effect no change in the actual practice.

Mr. Van Gelderen declared that he supported the proposed plan because he thought that the States should have the right of choice between the two systems. The present law of the Argentine Republic made of the clause "to order" an essential condition of the bill of exchange.

Mr. Jitta said he feared that, notwithstanding the explanations just given, misunderstandings might happen in case a draft should be payable to bearer. In that case, the designation as a "bill of exchange" would be necessary. His preferences, therefore, leaned toward the Hungarian system, which seemed to him of a nature to bring about a complete agreement amongst the delegates.

Mr. Lyon-Caen stated that France could not agree to a proposal which would tend to make express designation as a bill of exchange an essential condition of the validity of the bill. This decision was not grounded on theoretical reasons, but on the certainty, based on inquiry made in France amongst the persons concerned with the subject, that such a reform, as it would tend to overthrow existing customs, should not be adopted.

The chairman stated the following question:

Is it necessary to inscribe in the law an obligatory requirement for designation as a bill of exchange?

The vote gave the following results:

Ayes, 5: Germany, Austria, Brazil, Italy, and Turkey.



**Nays, 11:** Argentine Republic, Hungary, Belgium, Denmark, France, Great Britain, Luxemburg, the Netherlands, Russia, Sweden, and Switzerland.

The question was thus answered negatively by the committee.

Then a vote was taken on the proposal made by section 1.

This proposal was worded as follows:

The bill of exchange must contain in the text itself:

1. Designation as a bill of exchange or a designation equivalent in the language in which it is expressed.

However, the national laws may provide that the clause "to order" shall be, notwithstanding the absence of an express designation as a bill of exchange, sufficient to confer on the bill the character of a bill of exchange.

The result of the vote was as follows:

**Ayes, 10:** Germany, Argentine Republic, Austria, Denmark, France, Great Britain, Luxemburg, Russia, Switzerland, and Sweden.

**Nays, 5:** Hungary, Brazil, Italy, the Netherlands, and Turkey.

Belgium abstained from voting.

Messrs. Beernaert and Lyon-Caen stated that, notwithstanding the votes which they had cast, they should have preferred to support a solution of a less formal character, consisting in limiting the requirements concerning the bill of exchange to the declarations derived from its character. Such was the solution adopted by the laws of Great Britain and of the United States.

Mr. Hammerschlag inquired if the countries which require the clause "to order" would be willing to give it up.

Mr. Ernest-Picard answered that France could not consent to do so.

The chairman suggested that the committee should agree to the enumeration of the forms required in the bill of exchange adopted by Section II, viz:

The bill of exchange should contain:

An unconditional order to pay a determinable sum.

The name of the party directed to pay (the drawee).

The name of the party to whom payment should be made (the first holder).

Indication of the place of payment.

The designation of the place, day, month, and year of issue (the date).

The signature of the drawer.

The chairman noted that a single difficulty might arise concerning the designation of the name of the purchaser. Should the issue of a bill payable to bearer be allowed? (Question 5.)

The rapporteurs read the answers given to this question by the different sections. (Vide the reports.)

Mr. Carlin moved, in behalf of Section I, that a restriction should be imposed upon the issue of bills payable to bearer, which should be worded as follows:

The law shall permit the bill payable to bearer, but the contracting States shall have the power to prohibit its being issued within their boundaries when it shall be at sight. The holder shall have the power to change this bill to bearer into an ordinary bill of exchange by indorsing it.

Mr. Nagy said he thought the proposal made by Hungary merely differed in form from the proposal made by Section I. It was clear that the States should be given the means to protect the privilege of the issue of bank notes; a bill of exchange payable to bearer could not endanger seriously this privilege unless it had been accepted.



Therefore it should be sufficient to declare that a bill payable to bearer should not be subject to acceptance.

Mr. Carlin answered that, in some cases, when the solvency of the drawer was beyond all doubt, a bill payable to bearer and at sight, even if not accepted, might encroach on the privilege of bank notes.

Mr. Lyon-Caen pointed out that Section II had rejected the proposal to issue a bill of exchange to bearer, but had approved the indorsement in blank. In order to explain the apparent contradiction of these two solutions, Section II declared that the two kinds of indorsements involved different consequences with respect to the drawee. This was correct, provided that it was admitted that a bill of exchange "to bearer" could not be indorsed "to order." But it seemed necessary, in order to clear up the discussion, to specify the differences existing between the two kinds of indorsements, in case the bearer should be granted this power to indorse "to order."

Mr. Vivante said he thought proper to declare, first, that he did not consider it possible to permit the indorsement "to order" of a bill issued "to bearer." The following principle should be admitted without restriction: The drawer has the right to determine the law of circulation of the paper, and an indorser is not empowered to alter it.

The chairman stated that the situation of the drawee was not the same whether the bill was to order or was to bearer.

Mr. Vivante added that, in fact, the drawee was in a different situation, according as the bill was or was not to order, with regard to defenses. In case the bill was to order he was bound to ascertain the holder's identity in order to be validly discharged.

Mr. Simons pointed out also that the drawee who accepts a bill to order is bound to ascertain the validity of the indorsements. From this it was clear that by turning a bill "to bearer" into a bill "to order" the indorser created for the drawee obligations which the drawer had certainly not intended to lay on him, and which perhaps the drawee did not wish to assume in giving his acceptance.

Sir Mackenzie Chalmers stated that he did not consider it possible to prohibit bills "to bearer." It had been objected that these bills involved less security than bills "to order." This was not in question. In fact, they were much in use, and those who used them knew that they afforded only limited security. To suppress them would be to utterly overthrow commercial usages.

The chairman said he thought the true reason of opposition made to this kind of drafts was merely fiscal. Did the English law provide on this subject penalties applying to fiscal offenses?

Sir Mackenzie Chalmers answered that the penal law inflicted a severe punishment upon the guilty banker.

Mr. Vivante pointed out a new inconvenience applying to the bill "to bearer;" that it could not be claimed back in case of loss or theft. He considered it unfair that the indorser of a bill "to order," by turning it into a bill "to bearer," might deprive the previous indorsers and the drawer, who had been despoiled of it, of the possibility of claiming it back.

Mr. Carlin stated that he had not been convinced by the arguments presented, as they all applied to the bill indorsed in blank; this kind of bill being permitted, why should not the bill "to bearer" be also allowed?

Mr. Beernaert suggested that the power to prohibit the issue of bills "to bearer," either at sight or not, should be left to national legislation.

The President put to vote the following questions:

1. Should the law permit the issue of a bill of exchange to bearer?

This was adopted by the following vote:

Ayes, 11: Argentine Republic, Hungary, Belgium, Brazil, France, Great Britain, Luxemburg, the Netherlands, Sweden, Switzerland, and Turkey.

Nays, 5: Germany, Austria, Denmark, Italy, and Russia.

2. Should the law leave to national laws the power to prohibit the issue of bills of exchange to bearer payable at sight?

This was answered in the affirmative, by 14 votes against 2—Hungary and Luxemburg.

Mr. Carlin asked that the committee should give its opinion on paragraph 2 of the proposal made by Section I with regard to the power of indorsing to order a bill payable to bearer.

This paragraph is worded as follows:

The holder shall have in any case the power to convert a bill to bearer into a bill of exchange to order, by indorsing it.

Mr. Vivante made the following counter-proposal:

The holder shall not have the right to change the mode of circulation of a bill as formulated by the drawer.

The chairman expressed the fear that this formula would be too theoretical and too broad.

He then put to vote the proposal of Mr. Carlin.

The proposal was rejected by 11 votes against 3—Argentine Republic, Denmark, and Switzerland—both Belgium and Great Britain abstaining.

With respect to the question, "If the same bill contains different amounts, which shall prevail?" the resolution voted by Section II, and expressed as follows, was adopted:

In case the amount of a bill of exchange is stated in words and figures, and there is a divergence between the statements, the amount written in words shall prevail. In case the amount is stated several times in words or in figures the smallest amount shall prevail.

Then began a discussion on the clause concerning interest.

The rapporteurs read the conclusions of the sections on this subject. (Vide the reports.)

Mr. Vivante explained that Section II had considered this clause merely for the purpose of permitting interest with regard to the bill of exchange drawn at sight or at a certain time after sight. In fact, it was not to be admitted except in the case of this kind of draft. With regard to a bill payable at a stated maturity, it was not necessary to stipulate a rate of interest, as the calculation could be made at the time of issue. In the case of a bill with a fixed maturity the clause might involve the inconvenience of hiding an usurious loan, the usurer inscribing a low rate of interest in a bill the amount of which was equal to the amount due, increased by usurious interest.

The chairman set forth the following questions:

1. Should the law deal with the interest clause?

The committee answered affirmatively by 10 votes against 5—Argentine Republic, Denmark, France, Sweden, and Switzerland—Great Britain abstaining.

2. Should the law permit this clause with respect only to bills at sight or at a certain time after sight?

The committee answered affirmatively by 11 votes, with 5 abstentions—Denmark, Great Britain, the Netherlands, Sweden, and Switzerland.

Then the committee sought to fix a uniform rate applying to such interest charges.

Mr. Carlin said he considered this question as falling within the scope of national laws.

Mr. Hammerschlag stated that he thought the committee would have much difficulty in coming to an agreement about this rate. He suggested that in case the clause concerning interest should not state the rate to be used; it should be considered as null.

Mr. Fischell stated that in his opinion the clause concerning interest would be very useful to exporters, who do not know in advance at what time the goods they send abroad will be paid for. He considered it very proper to fix a uniform rate, to be applied in case no other should be stated in the bill.

Mr. Wurth-Weiler moved that interest should be calculated in accordance with the legal rate of the country where payment is made, unless there were a stipulation to the contrary.

The chairman pointed out that Section II had suggested the adoption of a uniform rate of 5 per cent.

This proposal was put to vote. Seven States answered in the affirmative, one in the negative, and eight abstained from voting.

The result of the vote being doubtful, the continuation of the discussion of this question was postponed to a subsequent sitting.

The committee admitted that "a bill of exchange might be drawn to the order of the drawer or for account of a third party."

Several members pointed out that it was unnecessary to mention in the law the bill drawn for account of a third party, the power to issue it arising from the general principles of law.

Mr. Lyon-Caen considered it necessary to indicate it. It was important that the law should be well understood by the merchants, and many laws, especially the French Code of Commerce, dealt with the bill of exchange drawn for account of a third party. If the uniform law did not indicate it, doubts might arise.

This observation was referred for examination to the committee on form.

The committee decided that "the law should permit the indication of a case of need (*besoin*). On a motion of Messrs. Vivante and Carlin, the examination of the effects of this indication was postponed until the conditions of acceptance and payment by intervention should be dealt with.

On the clause "return without costs," the chairman observed that Section I had already proposed on this subject a new question concerning the clause for dispensing with protest.

Mr. Fischel inquired if this clause was much used.

Mr. Ernest-Picard answered that it was often met with in France.

Mr. Hammerschlag stated that in Austria the clause "without protest" was often inserted in a bill; it involved, moreover, the same effects as the clause "ohne kosten." The Wechselordnung assimilated the two clauses.

Mr. Cloos said that the case was the same in Denmark.

Mr. Jitta said that he wished the meaning of the clause "return without costs" should be more clearly defined. Did this clause merely exempt from making protest? And when one said that it took effect only with regard to the indorser who had placed it on the bill, did this mean merely that if protest should be made, this indorser would have to pay the costs? If it was the drawer who placed it on the bill, one would presume that it would bind all the indorsers.

Mr. Carlin answered that the first section had provided for this case by setting forth a new question, to which the following answer had been given:

The clauses written on the bill of exchange by the drawer shall be deemed to have been written in all the indorsements.

Mr. Simons set forth the following suggestion:

If the drawer has inserted in the bill the clause "return without costs," the clause shall have the force of a prohibition to make protest not only with regard to him, but also with regard to all the indorsers. In this case the costs of the protest shall remain at the charge of the holder. On the contrary, if an indorser has inserted the clause, it is valid only with regard to him, as a dispensation from making protest; the holder who has a protest made may seek to recover its costs, even against the indorser who has inserted the clause.

The committee agreed to this proposal.

On the clause "exemption from making protest," Mr. Fischel said he thought that the admittance of this clause in a different sense from the clause "return without costs" would lead to misunderstanding in the countries where it was not known. In Germany "without protest" was equivalent to "ohne kosten."

Mr. Lyon-Caen and Mr. Carlin declared that they should not object to this clause being left out.

Mr. Van Gelderen made a similar statement.

Sir Mackenzie Chalmers requested that the meaning of the term "return without costs" should be more clearly stated.

Mr. Fischel explained that by inserting this clause notice was given to the holder that he should not cause a protest to be drawn. But the costs other than the cost of the protest (expense of correspondence, of redraft, compensation, etc.), would still lie. Moreover, the clause "return without costs" should be no more than a permission given by the indorser; the holder should be able, if he thought it proper, to pay no attention to the clause and have a protest drawn up and demand reimbursement of the costs.

On the clause "without guarantee," the "rapporteurs" set forth the answers made by the sections.

The chairman pointed out that what was in question was merely to decide if the drawer could insert the clause. The power to insert it into an indorsement would be dealt with later. The president would be pleased to know if the insertion of this clause by the drawer was frequent.

Mr. Ernest-Picard declared that in practice it was of no use, because when the drawer was not in a situation to warrant the payment by the drawee he did not negotiate the bill and remitted it only for collection.

Mr. Hammerschlag said he thought that if the drawer wished to issue a bill without being liable for it—and such a case might occur—he might make use of a document other than a bill of exchange (an assignation), while for the bill of exchange the liability of the drawer should be absolutely obligatory.

Mr. Nagy stated that he supported the English system, which admitted the issue of a bill of exchange without guaranty, because he recognized their utility in practice. Bills of exchange were often issued "in blank"—that is to say, without the drawer's signature. These bills were accepted and circulated without the guaranty of the drawer, who was indeterminate until the bill was signed. The signature of the acceptor is sufficient in order to secure the credit of the bill.

Mr. Beernaert said he thought it would be better to permit this clause. However, he would support the opinion of the majority.

Mr. Fischel stated that, in his opinion, this clause should not be permitted the drawer. It seemed to him that the liability of the drawer was absolutely necessary in a bill of exchange. The exceptional cases pointed out by Mr. Nagy referred to abuses which should not be encouraged. The law should not legitimate the issue of a bill of exchange not signed by the drawer. Such bills were not bills of exchange.

Mr. Van Gelderen stated that a bill not guaranteed by the drawer should not be considered as a bill of exchange, because such a bill would be lacking in all the requirements which should distinguish a bill of exchange from all other commercial bills. While the bill of exchange should be simple in its form, it should, however, have a peculiar character, which would make it a distinct thing; and, in his opinion, this character would disappear if the bill of exchange without guaranty was permitted.

By 13 votes against 3 (Great Britain, Hungary, and the Netherlands), the committee decided not to allow to the drawer the power to insert in the bill of exchange the clause "without guarantee."

On the clause excluding the option of indorsement, the chairman stated that the powers were in accord in permitting this clause. He merely inquired if it was settled that in the countries which should have admitted the clause to order as a substitute for designation as a bill of exchange, one ought, in order to make a document nonnegotiable, to insert the designation as a bill of exchange.

The committee agreed to this.

The sitting was terminated at 12.30 p. m.

### THIRD SESSION, JULY 7, 1910. (AFTERNOON SESSION.)

Chairman, Mr. Asser.

The sitting was opened at 3 o'clock p. m.

Question 6.—Drafts-copies.

What should be the provisions of the law concerning:

(a) The obligation of the drawer to furnish more than one draft of the bill of exchange?



The chairman made a summary statement of the reports of the sections on this subject.

Mr. Schneider made the following correction in the report of Section II:

The Russian law does not deny in all cases the right to require a second draft, but gives it exclusively to the first holder (preneur).

Mr. Jitta stated that Section III had intended to limit the use of several drafts.

The chairman pointed out that there was an intermediate system, which had been enacted by the Dutch law. According to it, the right to demand extra drafts was limited to the first holder, and did not extend to more than three copies.

Mr. Lyon-Caen inquired about the opinion on this point of the members of the central committee who belonged to the staff of a bank.

Mr. Fischel stated that several drafts were necessary for trade beyond seas. The law should give the right to require several drafts, and should not leave the decision of this point to custom. He quoted the case of an importer in a country beyond seas, who could not pay for his goods except by a bill of exchange; if he could not require several drafts, he would be often at the mercy of the seller of the bill. Moreover, if the right to require another draft was admitted in the case of loss of the bill, it would be more logical to give it without distinction, as proof of a loss was very difficult.

Lastly, if the holder wished to have the bill accepted and at the same time to negotiate it, the need of a second draft would be often felt. Copies would not always be sufficient, as not involving the same security.

To an inquiry by Mr. Van Gelderen, Mr. Fischel said that in Germany the number of the drafts was unlimited, but that there were no abuses of it. As a rule, one contented one's self with two drafts and asked for no other unless it was necessary.

Mr. Ernest-Picard, as well as Messrs. Hammerschlag and Wurthweiler, supported the statement made by Mr. Fischel.

Mr. Nagy objected that the existence of several drafts might lead to frauds. For this reason, in Hungary, several banks did not cash bills of exchange issued in a set. He supported the English system. In the cases pointed out by Mr. Fischel, the drawer and the payee had only to resort to a special agreement.

Sir Mackenzie Chalmers observed that in England all that concerned the bill of exchange was a question of free contract.

Mr. Fischel said that the English law could not be referred to, as it was grounded on the decisions of the courts. Up to now, there was contentment with the universal custom of giving several drafts, but it was quite possible that in case a refusal to do so should be brought before a court, the judge would admit that there was an obligation to give several copies.

He had learned from Sir Mackenzie Chalmers that if the payee succeeded in proving that the same drawer had always been accustomed to give him several copies, it would be probable that the judgment would be in favor of the right of the payee to demand a duplicate.

The question was put to a vote, in the following form:

Is the drawer bound to furnish several drafts at the request of the holder?

The result of the vote was the following:

Ayes, 13: Germany, Argentina, Austria, Belgium, Brazil, France, Italy, Luxemburg, the Netherlands, Russia, Sweden, Switzerland, Turkey.

Nay: Hungary.

Denmark and England abstained from voting.

The question was then discussed of the right of the holder to require several drafts of a bill, even if the bill did not bear a number.

Mr. Simons quoted a judgment of the Reichsgericht, delivered in a case of loss, according to which the holder could not require a second draft unless the lost bill bore the designation as "prima." However, if the parties agreed on this point, nothing stood in the way of the delivery of a second draft, even if the bill did not contain such a designation.

Mr. Lyon-Caen inquired how it could be proved that the lost bill contained such a designation.

Mr. Simons answered that in some cases it could be proved—for instance, by the tradesman's books.

The question was put to a vote, the result being the following:

Ayes, 3: France, Luxemburg, Switzerland.

Nays, 12: Germany, Argentina, Austria, Hungary, Brazil, Denmark, Great Britain, Italy, the Netherlands, Russia, Sweden, Turkey.

Belgium abstained from voting.

(b) What should be the provisions of the law concerning the form and language of the draft?

It was decided without discussion that the drafts should bear identical designations and be numbered, in default of which each copy should be considered as an independent bill.

(c) What should be the provisions of the law concerning the rights of the holder of one of the drafts?

The basis of the discussion held on this point was the answer made to the question in the report of Section I. The committee unanimously adopted the first paragraph of this answer, after having substituted the words "he shall be discharged" for the formula "he shall be presumed to have been discharged."

Paragraph 2, corresponding to Article 78 of the German draft, was also unanimously carried.

Paragraph 3 was adopted as a principle, the form of it being declared subject to change.

New question proposed by Section I:

Conditions of the recourse.

The answer made by Section I, which was nearly the same as the answer of Section II, was adopted as a principle, subject to changes of form.

(d) Copies.

Mr. Simons pointed out that by error the conclusion on this subject reached by Section II had been omitted. It was similar, upon the whole, to the conclusion of Section I.

The committee agreed to it in principle, subject to changes in form.

Question 7. Should the law regulate the documentary draft?

The unanimous answer was that the documentary draft should not be regulated by the uniform law.

Question 8. What should be prescribed with reference to—

(a) The form of indorsement in general.

Should the law recognize several forms of indorsement with different effects as to—

1. Transmission.
2. Guarantee.

The chairman summed up the answers made by the different sections. A discussion occurred about the recognition by the uniform law of the indorsement made by way of pledge.

Mr. Lyon-Caen stated the reasons which could be set forth in favor of an express regulation of this form of indorsement.

Mr. Nagy having made the remark that this question was not within the scope of the law of the bill of exchange, Mr. Carlin replied, seconding Mr. Lyon-Caen, that the special regulation of this form of indorsement by the law of exchange was justified by the two following consequences involved by it:

1. Such an indorsement did not transfer the ownership of the bill.
2. It created a special situation with regard to defenses.

Mr. Vivante seconded this view by stating that the Italian law, which did not give to the indorser by way of pledge a right of his own, but set him in the same category as the indorsee by power of attorney, led to frequent abuses.

Mr. Simons, having interpreted the Questionnaire in a different sense, requested that the discussion should be postponed, in order that he might study the answers made by the other sections.

The chairman, before complying with this request, expressed the opinion that it was not strictly necessary to regulate indorsement by way of pledge, but that such a regulation would nevertheless be useful for the purpose of avoiding an equivocal situation for the holder.

At the request of Mr. Fischel, MM. Lyon-Caen and Ernest-Picard gave several explanations concerning the French law, after which the discussion was postponed.

With reference to the answer made by Section I to the question concerning the form of the indorsement transferring the ownership of the bill, the chairman drew the attention of the committee to the following point:

It would be impossible to admit the clause of *Rektawechsel* in the countries which required the clause "to order" as an essential designation.

Mr. Carlin replied that in such a case the drawer might substitute the designation as a bill of exchange for the clause, "to order."

Mr. Lyon-Caen inquired if the resolution carried by the committee at its last sitting, with regard to the question of designation, could be interpreted in this way.

The answer was unanimously affirmative.

The chairman proceeded to sum up the answers made by the sections with regard to the form of indorsement.

The question of conditional indorsement was then taken up.

Mr. Fischel defended the German system. Such an indorsement was valid, but the condition was considered as null.

Mr. Vivante said he did not think it logical to lay on the indorser an obligation more extensive than that which he intended to assume.

MM. Wurth-Weiler and Ernest-Picard stated that in practice the conditional indorsement was very rare.

Mr. Vivante set forth his proposal thus: Conditional indorsement should be valid, but the indorser should be bound only with regard to the condition he had stipulated.

The chairman put to a vote the following questions:

1. Shall the conditional indorsement be null?

With the exception of the delegate of Russia, all the delegates cast a negative vote; the delegate of Argentina was absent.

2. The proposal made by Mr. Vivante.

This was rejected unanimously with the exception of Italy.

The German proposal was then unanimously carried.

The question of indorsement to bearer then arose for discussion.

Mr. Carlin said his opinion was that such an indorsement should be admitted and regulated by the uniform law.

It was observed to him that the indorser ought not to have the right to change the character given to the bill by the drawer.

Mr. Vivante drew the attention of the committee to a difficulty peculiar to Italy, whose law did not admit the claiming back of a bill "to bearer." An indorsement of a bill to bearer would give to the purloiner of the bill the possibility of depriving the previous indorsers of the right to claim it back.

The chairman put to a vote the question of the admission by the uniform law of indorsement to bearer.

All the States, except Hungary and Switzerland, answered in the negative, Belgium and Great Britain abstaining from voting.

The sitting was terminated at 5.15 o'clock p. m.

#### FOURTH SESSION, JULY 8, 1910.

Chairman, Mr. Asser.

The sitting was opened at 9.30 a. m.

Continuation of the discussion on the rate of interest.

Mr. Wurth-Weiler stated that, after having reflected upon the question, he considered it preferable to withdraw the proposal he had made on the previous day, viz, to admit as the rate of interest the legal rate of the place of payment, the reasons of this withdrawal being the following:

- (a) In some countries there was no legal rate of interest.
- (b) The legal rate might not be known at the time of the negotiation of the bill of exchange, and the inquiries necessary to ascertain it did not accord with the principle of the rapidity of commercial transactions.

(c) His proposal would have been contrary to the provision voted in the previous sitting with regard to the definiteness of the amount as a substantial condition of the validity of the bill. Indeed, the legal rate might in certain countries be variable. For instance, the legal rate might depend upon the rate of discount of the national

bank of these countries, a rate which varied essentially. Moreover, the legal rate at the time of issue of the bill might be no longer in force at maturity, and this would involve complications.

(*d*) England had admitted for the case that was actually in question a uniform rate of 5 per cent. The greater number of the drafts connected with the oversea trade passed through that country. So it would be preferable, for the purpose of bringing about uniformity, to admit in the uniform law an invariable rate of 5 per cent.

Mr. Ernest-Picard stated that the technical delegates supported the rate of 5 per cent. He added that personally he had joined in the opinion of his colleagues, because this rate had not been arbitrarily fixed, but had been determined by English commercial custom; although as a matter of principle he was opposed to fixing by a uniform law a banking rate or commission.

Mr. van Gelderen opposed the fixing of a rate by the uniform law. This should be left to national legislation, and the question should be submitted to the Committee on Private International Law, which should state which law should apply in case of conflict.

The chairman stated that the proposal made by Germany, as to the rate of the interest when not designated in the bill, had been adopted.

The chairman then opened the discussion on the question whether indorsement by way of agency should be admitted or not. On this point he read the answers given in the reports of the different sections.

Mr. Nagy asked that a private indorsement by way of agency should not be considered as such unless between the parties. With regard to third parties, it should be considered as a regular indorsement.

Mr. Lyon-Caen said he willingly admitted with Mr. Nagy that, in the absence of a clause stating that the indorsement was made by way of agency, the proof of such a power of attorney could be set up only with regard to the relations between the parties concerned (indorser and indorsee).

The chairman said, with reference to Article 135 of the code of commerce of the Netherlands, that the delegation of that country was willing to give up the provision stipulating that an irregular indorsement should have only the force of an indorsement by power of attorney with regard to the relations between the indorser and the indorsee. The observation made by Mr. Lyon-Caen concerning proof was correct, but superfluous, being a mere application of the general principles of the law. He requested the delegate of Brazil to explain what was meant by the restrictions which were to be expressly stated in the indorsement by power of attorney, in case the latter did not grant full power. (Par. 21, report of Sec. II.)

Mr. de Menezes replied that, according to Brazilian law, the clause, "by agency" (procuration), stated in the indorsement, indicated a full power granted to the agent, unless the power was limited, in which case the restriction should be expressly stated in the indorsement. This provision tended to make certain the effects of a general power of agency, which were not the same in different legislations.

However, the question having been discussed in the section with which he had the honor to work, he had found it consistent to join



in the following formula, which could be found in the report of said section:

If the indorsement contains the statement "for collection" or "by way of agency," or any other statement giving authority, the indorsee is entitled to set up, in the name of the indorsee, all the rights springing from the bill of exchange. However, he may deliver the bill only through an indorsement by power of attorney, and not by an indorsement transferring the ownership of the bill.

Mr. Nagy opposed this proposal; he considered that the regulation of the cases of an order for collection should be left to the courts of each country. His section had concurred in this opinion.

The chairman submitted for discussion the effects of an indorsement transferring the ownership of the bill. He suggested the adoption of the answer given by Section I, which was expressed as follows:

A simple indorsement transfers the ownership of the bill with all its accessories (mortgage, pledge, etc.); it gives to the holder the right to transfer the bill in his turn; it compels the indorser to warrant acceptance and payment at maturity.

MM. Vivante and Beernaert said they thought it necessary to specify that the mortgage which was in question could be made only in conformity with national legislation.

Mr. de Menezes said that, with regard to the question whether the principle laid down by the report of Section I—that the indorsement transferred the ownership of the bill with its accessories (mortgage, pledge, etc.)—should be agreed to or not, he considered that such securities were not within the scope of the law of exchange, and that the prescription referred to was contrary to the theory adopted by the conference, according to which the bill of exchange was valid by itself and without regard to anything that was not contained in the document.

If such a clause was admitted it would result in the transfer with the bill of exchange of securities which were not stated in it. For this reason a similar provision which was contained in Article XX of the Antwerp project had been eliminated by the Congress of Brussels of 1888. However, as it might happen that the bill itself would expressly set forth such a security, Mr. de Menezes considered that in this case the indorsement transferring the ownership of the bill should be deemed as transferring also the security; but this fact should be taken into account—that several legislative systems submitted the transfer of real property to certain formalities, and in order to complete the provisions of the uniform law as it appears in Article XVI of the draft made by the Institute of International Law the following restrictions should be added:

The acquisition of such rights being subject to compliance with the conditions prescribed by the law of the country in which the property is located.

The chairman replied that these accessories ought to be governed by the national law.

Mr. Lyon-Caen said he considered that this remission of the matter to the national laws should be expressly stated in the uniform law.

In the opinion of the chairman, such a statement might give rise to difficulties, not only in the case actually in question, but also and chiefly in the cases in which the reference was not stated, but implied.

Mr. Lyon-Caen thought that the report should in all such cases state the fact.

The committee adopted this view.

The chairman proceeded to the question of indorsement in blank.

He suggested that the answer made by Section I should be agreed to. This answer was expressed as follows:

1. Fill up the blank with his own name.
2. Fill up the blank with the name of another person.
3. Transfer the bill to a third party without filling up the blank.
4. Give it a new indorsement in blank or in the name of another person.

This form was adopted.

Defenses which may be set up against the holder by the party liable.

On this subject the chairman read the propositions of the first section, as follows:

Only the following defenses shall be set up against the holder by the party liable:

- (a) The defenses pertaining to the holder personally.
- (b) The defenses arising from the contents of the bill itself (omissions).
- (c) The defenses founded on provisions of the uniform law or on special provisions of the national laws, to which they are remitted.
- (d) The defenses based on the incapacity of the signer.

However, the party liable may, as a principle, set up against the holder in bad faith all defense without distinction.

The uniform law need not give a definition of bad faith.

The methods of proving the defenses are left to the provisions of national laws; the committee on private international law shall determine the law to be applied.

To national laws is also remitted the question whether certain pleas, which the party liable might set up, shall exempt him from making payment to the holder or may be invoked by him only by way of a suit for restitution. The committee on private international law shall determine the law to be applied.

Mr. de Menezes thought the word "omissions," contained in paragraph 2 of the rules concerning the defenses, was too restricted. He considered it preferable to use the word "defects."

The chairman said he saw no objection to this change of form.

Mr. Nagy requested that it should be agreed that the defenses to be set up against the holder, which did not arise from the law of exchange, should be restricted to such holder. This was the principle of the Hungarian and German laws.

The chairman announced the unanimous agreement of the committee upon this point.

Mr. Hammerschlag requested an explanation with regard to the following sentence:

The question whether certain pleas, which the party liable might set up, shall exempt him from making payment to the holder or may be invoked by him only by way of a suit for restitution.

Mr. Lyon-Caen summed up the reasons for which Section I had adopted this resolution. According to certain legislative systems—that of Sweden, for instance—the acceptor was bound to pay, even if he had a defense to set up, and was merely entitled to sue later on for restitution. The sentence alluded to aimed at this system.

The chairman thought it would be dangerous to insert this special provision in the law.

Mr. Beernaert requested that at least the report should make mention of it.

Mr. Vivante requested that it should be specified that the defenses which might be set up against the holder were those that arise from the direct relations between the drawer and the drawee.

Mr. Lyon-Caen thought that the point should be indicated in the report.

Mr. van Gelderen declared that, in order to be able to agree to the provisions of the uniform law, the Argentine would sacrifice her own legislation concerning indorsement. This legislation at present considered that an indorsement in blank did not transfer the ownership of the bill, but was merely equivalent to an indorsement by way of agency.

The answers given by Section I with regard to indorsement by power of attorney and indorsement for guaranty were adopted, as follows:

#### INDORSEMENT BY POWER OF ATTORNEY.

Such an indorsement implies authority, and gives to the holder the power to indorse the bill, except for a contrary stipulation, but only by power of attorney.

The only defenses which can be set up against the holder of the bill shall be such as could be set up again the indorser if he had remained the holder of it.

#### INDORSEMENT FOR GUARANTY (PLEDGE).

The holder who receives a bill of exchange shall be authorized to receive its amount at maturity. He shall have power to indorse it only by power of attorney.

The defenses which may be set up against the holder shall be those only which could be set up against him if he was holder by virtue of an indorsement transferring the ownership of the bill.

The chairman proceeded to question 8, section (d):

What should be prescribed with reference to indorsement subsequent to maturity?

According to Mr. Nagy, maturity arrested the circulation of the bill of exchange, and fixed from that moment the rights and obligations of the signers of the bill. Abuses might arise, if, subsequently to maturity, the bill could be indorsed with the same effects as before. Indorsement subsequent to maturity, with regard to third parties, should be considered as a mere assignment; the relations of previous indorsers should be subject to no change.

Mr. Vivante opposed indorsement subsequent to maturity—first, because it was liable to countenance usurious practices; secondly, because it gave an unlimited duration to the bill, whose existence should be terminated by maturity on account of the stamp taxes.

Mr. Fischel supported these observations.

Mr. Lyon-Caen inquired if, in practice, indorsements subsequent to maturity were numerous.

The technical delegates replied that they were rather exceptional.

The chairman inquired if Mr. Nagy could not support the answer given by Section II, which was the following:

An indorsement placed on a bill of exchange after protest for nonpayment, or after the expiration of the time for making protest, involves merely a cession of the rights of the indorser; but the payer is not bound to verify the genuineness of the indorsement.

Mr. Nagy agreed to this solution, which was in harmony with the Hungarian law.

According to Mr. Lyon-Caen, this answer seemed to indicate that the indorsements subsequent to maturity, but previous to protest or to the expiration of the time for making protest, would have the same effects as would the previous indorsements. It would be useful to state it for the sake of clearness.

After Mr. Fischel had made some observations concerning the practical scope of the question, in case an indorsement occurred a very short time after maturity, the committee adopted the resolution of the second section.

The chairman read the new question discussed by Section I.

What clauses may be inserted in an indorsement?

Answer. There may be inserted in an indorsement:

(a) The designation of a referee in case of need (*besoin*).

(b) The clause, "return without costs." In the latter case, the clause would have no effect except with regard to the indorser who had inserted it.

The chairman stated that, paragraph 1 having already been carried, he submitted for discussion paragraph 2. He inquired what was meant by the observation annexed to the answer, and expressed as follows:

If the clause, return without costs, is inserted in the document by the drawer, the successive indorsers shall not have the right to suppress it and thus to make worse the position of the drawee; consequently, the absence of such a clause in the indorsements does not change its effects.

Mr. Lyon-Caen said that Section I had chiefly aimed at the drafts drawn by tradesmen on customers who were not merchants; to avoid in such a case a protest which would be disagreeable, it seemed necessary to bind the holder by the clause, "without costs," in default of which this clause would be illusory.

Mr. de Menezes made reservations. In his opinion, the clauses "without guarantee" and "return without costs," placed on the bill by an indorser, should be considered as null.

The chairman submitted for discussion the question whether the indorsement might or not be made to bearer.

Mr. Simons stated that in a previous sitting it had been decided that indorsement to bearer should be prohibited. How should this prohibition be stated in the uniform law? He suggested a formula involving an express prohibition.

The chairman inquired if it would be necessary then to regulate the effects of an indorsement made in disregard of this provision?

Mr. Simons suggested that such an indorsement should be declared null.

Mr. Nagy requested that it should have at least the value of a guaranty; he insisted upon the admittance of the indorsement to bearer—i. e., of the signature preceded by the statement, "transferred to bearer."

Mr. Fischel said he opposed indorsement to bearer. If one did not wish to write down the name of the person to whom one intended to indorse the bill, one could make use of the indorsement in blank, which involved the advantage of affording greater security, as a subsequent holder had always the right to fill up the blank space by inserting his name in it. Once a bill had been indorsed to bearer, subsequent indorsements to order would not give the same security against theft; the thief, in order to be considered a lawful holder,

would have merely to cancel these indorsements, and so the bill would become again a bill indorsed in blank.

Mr. Carlin thought that a solution similar to that which had been adopted with regard to conditional indorsement should be sought; the indorsement should be valid, but the clause "to order" should be considered null. He suggested, by way of compromise, that the uniform law should not admit indorsement to bearer, and should support this, by way of penalty, by providing that such an indorsement should be valid only as indorsement in blank.

The chairman stated that this was coming back to the indorsement in blank.

Mr. Fischel opposed the suggestion made by Mr. Carlin.

Mr. Nagy objected that, according to the German law on the cheque, indorsement to bearer was forbidden; such an indorsement, if made, was not null, but was considered as a guarantee.

Mr. Lyon-Caen inquired if there were countries in which indorsement to bearer was admitted.

Mr. Ernest-Picard replied that there, where it did not exist, nobody complained of its absence. In his opinion it would be best to prohibit it; he favored the nullity of such an indorsement.

On the request of Mr. Carlin, the chairman, before putting to a vote the Swiss proposal, set forth a preliminary question, thus:

Should the uniform law deal with indorsement to bearer?

The answer was unanimously affirmative, with the exception of Great Britain.

Then the chairman put to a vote the proposal made by Mr. Carlin, divided into two parts, as follows:

1. Should the uniform law prohibit indorsement to bearer?

Twelve affirmative votes and three negative votes (Argentina, Hungary, Switzerland) were cast; Great Britain abstained from voting.

2. Should this interdiction be supported by a penalty?

The answer, with the exception of Great Britain, which abstained from voting, was unanimously affirmative.

The chairman put to a vote the German proposal, which was the following:

The penalty shall be the nullity of the indorsement.

This was adopted by 12 ayes to 3 nays (Belgium, Hungary, Switzerland). Great Britain abstained from voting.

Mr. Mayer requested that it should be stated that the clause of "Rektawechsel," inserted by an indorser, had not the same effects with regard to the subsequent indorsers as the same clause when inserted by the drawer.

The chairman stated that the committee, not having studied the question of cover (question 9), would proceed to the examination of question 10.

Should the holder, as a matter of principle, be free to demand or not to demand acceptance?

Should the power be given to stipulate in the bill of exchange: That presentment for acceptance is prohibited, or that presentment for acceptance is obligatory?

The first point was unanimously agreed to.



The chairman submitted for discussion the second question:

Power to insert in the bill of exchange a clause prohibiting or requiring acceptance.

Mr. Hammerschlag said he should prefer not to admit the clause requiring acceptance except with regard to domiciled bills. As a rule, the right to decide whether or not he shall present the bill for acceptance belonged to the holder. If the drawer had an interest in its being presented, it was his business to send it to the drawee before he negotiated it, but it would be unfair to impose this task on the holder. With respect to the clause prohibiting presentment Mr. Hammerschlag thought that, for reasons both theoretical and practical, the law should not admit it expressly. It was true that at present this clause was now and then found on a bill of exchange, especially in the case of manufacturers and merchants drawing on their customers, but it should be sufficient to tolerate this clause without having the law deal with it; otherwise it would furnish occasion for abuses.

Nevertheless, he was ready to support the contrary view, if other countries attributed a decisive importance to the admission of these clauses, but only on the condition that the clause prohibiting presentment should not be admitted with respect to domiciled bills of exchange, the danger of abuses being especially great in such cases.

According to Mr. Vivante, the prohibition of this clause might involve the demand for a premature reimbursement of the bill, and he thought it necessary to reserve to the drawer the right to defend himself against such a premature reimbursement. A merchant might receive the goods long after the bill had been drawn on him. The drawer might fear that, in such a case, presentation for acceptance would be met with a refusal, and be followed by the return of the bill which should have been paid.

Mr. Beernaert said he was a supporter of the existing legislation, which had shown evidence of its value. For this reason, the conference of Brussels of 1888 had requested its maintenance.

The chairman drew the attention of the committee to the value of the argument made by Mr. Vivante.

Mr. Nagy supported the opinion of Mr. Vivante. It was necessary on this point to leave entire liberty to the parties concerned.

Mr. Hammerschlag explained the reasons of his proposal. If it was admitted that the drawer of a bill of exchange which was domiciled might prohibit presentment for acceptance, it might happen that some person, being sure that the bill would not be presented, would draw, not having any right to do so, on a firm of good credit, and would state his domicile, or the domicile of one of his friends, as the place where payment was to be made. A few days before maturity he might substitute for the bill a new one bearing the same statement. By negotiating this bill, the drawer might get money unlawfully, and continue to do so, withdrawing the bill a few days before maturity and substituting for it a new bill, bearing the same statement, maturing later on.

Mr. Ernest-Picard was aware of the dangerous character of a bill of exchange drawn under such conditions, but inquired what should be decided with regard to a bill not subject to acceptance and not domiciled by the drawer, on which an indorser should place the designation of a domicile,

Mr. Simons replied that the uniform law should not sanction such a bill.

The chairman put to a vote the following proposal:

Should the drawer have the right to prohibit presentment of a bill for acceptance or to forbid it before a stated time, with the exception of domiciled bills?

The answer was unanimously affirmative, with the exception of Argentina and of Great Britain, both of which abstained from voting.

Mr. Carlin requested that the position of the indorser in such a case should be made clear. The latter should not, at least if the committee did not wish to be inconsistent with the vote which had just been taken, be entitled to insert a prohibition of presentment for acceptance.

Mr. van Gelderen expressed his satisfaction with this statement, for it gave the reasons for his abstention.

The committee, the question being submitted, agreed to the view expressed by Mr. Carlin.

The chairman proceeded to the question concerning the obligation of the bearer to present the bill to the drawee when it was payable in a place other than the domicile of the drawee (designation of a domicile).

Mr. Nagy suggested the solution given by Germany and Hungary, according to which presentment was not obligatory by virtue of the law, but merely by virtue of a clause inserted by the drawer. This was unanimously agreed to.

The chairman submitted for discussion the obligation of the drawer to present the bill to the drawee when it was drawn at sight or at a certain time after sight.

He stated that some sections, for instance Sections I, II, and III, had made a distinction between visa and acceptance.

Mr. Fischel said that presentment and designation of the date were indispensable in the case of a bill drawn at a certain time after sight, but that such presentment should be made for acceptance, and not merely for visa.

It was admitted as a general rule that acceptance might be given by a mere signature placed on the face of the bill of exchange; insertion of the date should be indicated with regard to a bill of exchange drawn at a certain time after sight. So a signature with a date, with regard to a bill drawn at a certain time after sight, should imply acceptance, but it would be very dangerous to admit that, if the word or was added to the visa, it would be no longer an acceptance. Numerous misunderstandings would be the result of such a policy. In order to make clear the purport of the visa, it would become necessary to write "seen, but not accepted." It would be better to put an end to the system of the visa and to present only for acceptance.

Mr. Jackson supported this opinion.

Mr. Hammerschlag said he did not deny the advantages of the visa, but thought the latter did countenance abuses, as well as complicity between the holder and the drawee, to the prejudice of the drawer. The drawee could, at his will, give the visa with an earlier date, by way of accommodation for the holder, when the time granted by the law for making presentment had already expired. In this way the holder could prolong the liability of the drawer beyond the time fixed by the law. Such an abuse was not practicable if accept-

ance was made obligatory in order to make the time after sight begin to run, because the drawee could not make it run without becoming liable.

Mr. Carlin said he did not agree with the opinion set forth by Mr. Fischel. No misunderstanding was possible. Acceptance followed from a mere signature placed on the face of the bill, but if it was preceded by the word "seen" there was no doubt that a visa was in question. Moreover, if the visa was not admitted, how could the maturity of a bill be established, drawn at a certain time after sight, which contained the clause against acceptance?

Mr. Simons replied that if the visa was not admitted it would be logically impossible to forbid acceptance of a bill of exchange drawn at a certain time after sight. In this case such a clause should be void.

Mr. Lyon-Caen inquired if the Belgian law, which admitted that a dated visa fixed the date, from which time after sight began to run, had given rise to difficulties.

Mr. Beernaert replied that he would give information to the committee on this point as soon as he should be in a position to do so.

The chairman consequently proposed that discussion on this question should be postponed, which was agreed to.

The committee proceeded to Question 11:

What should be the provisions of the law with regard to:

(a) The form of acceptance (acceptance by separate document)?

The chairman stated that everybody agreed in considering the copy as a separate document, but inquired if it was the same concerning the "allonge."

Mr. Hammerschlag said that the "allonge" was a part of the bill; acceptance on the "allonge" should be permitted.

MM. Fischel and Carlin declared that there were practical arguments against this opinion. The "allonge" might be mislaid or be attached to another bill, and there was always room on the face of the bill itself sufficient for placing a signature.

Sir Mackenzie Chalmers said that the question was of no interest with regard to the legislation of the United States, as acceptance by separate document was allowed there.

The committee decided that the "allonge" should not be considered as a part of the bill of exchange.

The chairman submitted for discussion a new question, viz:

Within what time should acceptance be given?

Mr. Carlin proposed a period of 24 hours.

Mr. Nagy replied that such a delay was a sort of day of grace.

Mr. Carlin and Mr. Fischel opposed the obligation laid on the holder to give up the bill during this delay.

Mr. Beernaert stated that the Belgian law implied giving up the bill, and granted for this purpose a delay of 24 hours.

Mr. Jackson said that in England, for reasons arising from practice, it would be very difficult to determine the hour. He requested that the delay should be fixed for the morrow of the presentation.

Mr. Simons said that he thought it dangerous to shorten the period.

Mr. Fischel inquired which should be the date of acceptance when a bill was in question drawn at a certain time from sight.

Mr. Lyon-Caen said that, as a matter of principle, acceptance should not be dated, but merely signed. The date should not be required except with regard to bills payable at a certain time after sight, as such bills were payable beginning from the date of presentment.

The chairman put to a vote the question whether or not the law should fix a delay between presentment and acceptance.

The answer was affirmative, the number being 12 ayes to 4 nays (Germany, Austria, Hungary, Great Britain).

It was decided that acceptance must take place on the day after the day of presentment.

Question 11, Section B:

What should be the provisions of the law with regard to the character and the effects of acceptance?

Mr. Carlin pointed out that in the first section France and the Argentine Republic had considered that the holder should not have the right to reconsider his refusal of an offer containing restrictions. The other States represented in the section had sustained the right to reconsider such a refusal.

The chairman submitted the following question:

Should the drawer have a right of recourse against the acceptor?

Mr. Nagy answered in the affirmative. The drawer against whom all recourse had been exercised had the right to exercise recourse against the acceptor. This was the solution of the German and of the Hungarian law, and it was all the more fair that, in the majority of cases, the acceptor was the debtor of the drawer, and that the latter would not give credit to a client, for instance, if he was bound to recur to civil action.

The French law, which started from the theory of an authorization, did not correspond to the true relations between the drawer and the acceptor; the order to pay a third party was not a true authority, in the sense that the acceptor should not be bound to pay also to the drawer.

Mr. Lyon-Caen said that, according to the French code of commerce, the drawer who paid the bill was subrogated to the rights of the holder.

Mr. Nagy considered that the case was not the same, as the acceptor might set up against the drawer the exceptions he had against the holder.

Mr. Lyon-Caen replied that in that case the drawer had merely to indorse the bill to his own name in order to have a right of his own against the drawee-acceptor; his situation was not seriously changed.

The chairman said that Dutch legislation agreed with the French on this point. The drawer had no action against the acceptor, but he had a right to the cover. The German system constituted, in his opinion, an improvement.

He proposed that a vote should be taken on the question, expressed thus:

Should the law give to the drawer a direct action against the acceptor?

The answer was unanimously affirmative.

The sitting was terminated at 12.30 p. m.

FIFTH SESSION, JULY 9, 1910.

Chairman, Mr. Asser.

The sitting was opened at 9.30 a. m.

The chairman requested the members of the committee to send back, with their remarks, the proofs of the minutes of the second and third sittings not later than the following Monday. He stated that the project of the Congress of Brussels of 1888 had been printed and would be distributed without delay.

Before the discussion of the Questionnaire should be resumed, Mr. Lyon-Caen set forth his desire to state to the committee a few points which, in his opinion, called for some explanation.

Firstly, in several countries—for instance, Germany—it was admitted that the drawer might designate himself as the drawee.

It seemed evident that there was no difference between such a bill of exchange and a bill to order, and he thought proper to inquire for what reasons this document should be considered as a bill of exchange.

Mr. Simons stated that, according to the German law, the drawer had the power to designate himself as the drawee, but only in case the place of payment was different from the place of issue. Upon the request of merchants, the German draft as presented to the conference no longer contained this condition and gave the said power to the drawer in all cases.

Mr. Nagy said that bills to order were not in use in trade and were not cashed by the banks. So resort was had to a substitute in the form of a bill of exchange in which the drawer drew on himself and generally accepted at the very moment of issue.

Mr. Fischel explained that drafts of a bank on its branch offices, or vice versa, were frequently resorted to and were even necessary for banking purposes and for trade beyond seas. When a merchant of a remote country had occasion to make payments in Europe, he applied to a branch office of a European bank to be supplied with a draft on the head office in Europe, by which draft the transfer was made. It would not be proper to oblige the banks to apply for this sort of business to foreign firms when they had themselves a branch or an office in the town where payment was to be made. Such drafts were true bills of exchange in the original meaning of this word. In such cases the bill to order could not be used.

Mr. Lyon-Caen put the following question: As the committee has not admitted the clause providing for interest except with regard to bills of exchange drawn at sight or at a certain time after sight, what should be the penalty if such a clause is inserted in a bill drawn payable at a fixed date?

Mr. Lyon-Caen proposed that such a clause should be considered null.

This proposal was unanimously carried.

Finally, Mr. Lyon-Caen drew the attention of the conference to the case of a bill of exchange containing the "Rekta-Klausel" and nevertheless indorsed. The German law prescribes that such an indorsement should be considered as a mere assignment.

The chairman saw a contradiction in the admission of the indorsement made on a bill of exchange which, by the "Rekta-Klausel," prohibited indorsement.

Mr. Nagy pointed out that the question had been very much discussed by economists. Some applied to the case the theory of conversion, but this was not the opinion of the majority. Some



gave to such an indorsement, not valid as an indorsement, the effect of an assignment; others gave it the effect of a cession.

The committee decided not to deal with the question.

The chairman submitted for discussion the question whether or not the uniform law should admit indorsement by way of pledge (hypothecation).

Mr. Simons said that the German law on the bill of exchange did not provide expressly for indorsement by way of pledge. According to the German civil code, whoever intended to pledge a bill of exchange had to indorse it and deliver it to the creditor. The latter had the right to collect it, but he was bound to give back to his debtor the amount in excess of the debt. In the case of failure of the creditor, the indorser, having remained owner of the bill of exchange, had the right to claim it back; but he would often find it difficult to prove that his transfer, made in the form of an indorsement transferring the ownership of the bill, was merely made by way of pledge. In the case of the failure of the indorser a controversy had arisen on the question whether or not the creditor could set up on the assets of the failure the total amount of the debt, or only the amount which he had not succeeded in securing from the other guarantors.

The result of these explanations was that an express regulation of indorsement for pledge might lead to the removal of such difficulties, but it was not absolutely necessary.

Mr. Fischel requested that indorsement for pledge should not be expressly regulated. It was true that an indorsement called "indorsement for guarantee" involved this advantage, that it pointed out that the bill of exchange had merely been pledged, but, as a matter of principle, it would be better to leave aside the settling of the operations which gave rise to the issue of the bill, and not to load the bill of exchange with statements which would require explanations and whose scope could not be easily determined. In Germany the absence of such a form of indorsement had not been felt. Even if the clause for guarantee might improve the condition of the pledger, such an improvement was not considered as necessary. Whoever pledged public securities or shares was in the same condition as one who borrowed money under the security of a bill of exchange. In both cases the amount lent was generally inferior to the value of the pledge, so that abuses were always possible if the creditor sold the shares or pledged them for an amount exceeding the amount of his loan. Nevertheless, no fear of such abuses existed, and they certainly constituted no obstacle to the numerous and heavy operations in loans on shares. Lastly, one should not forget that an indorsement for guarantee would involve consequences which would differ according to the various national laws, a fact which would lead to many difficulties, especially in the case of a bankruptcy.

Mr. Nagy supported the opinion of Mr. Fischel. He pointed out that the French law itself did not deal with indorsement for warrant in the law of exchange, but in the civil code (law of pledge). The result was that such an indorsement had no standing under the law of exchange, and it would be proper to leave the question to the national law of each country.

Mr. Vivante supported the proposition to leave to the national laws the regulation of the clause regarding hypothecation. If the debtor-

pledgor were obliged to indorse the bill of exchange by an indorsement transferring the ownership, the indorser might put himself in a very difficult position in the face of laws which did not admit, against a written declaration, proof to the contrary even by witnesses or by business books. How would the indorser in such a case be able to prove that he had made the indorsement only by way of pledge?

Mr. Lyon-Caen proposed that a provision that the national laws should be able to admit indorsement for pledge should be inserted in the uniform law.

The proposal was unanimously carried.

Then was submitted for discussion question 11, section (c):

Should the drawee have the right to cancel his acceptance so long as he has not delivered the bill of exchange or has not given notice of his acceptance to the holder?

The chairman summed up the resolutions adopted by the five sections with regard to this point. There was general agreement that the drawer lost his right to cancel his acceptance, once he had delivered the bill or given notice to the holder of his acceptance.

The committee so voted.

Question 12, section (a). In what cases is there refusal to accept?

The result of the summary of the reports, given by the chairman, was that the answers given to this question by all the sections were, in principle, the same. However, Section V had set forth a special proposal which had to be examined, as follows:

The designation of an address where payment is to be made, located within the place of payment, shall not be considered as a qualified acceptance.

The committee unanimously adopted this proposal, reserving the question of its form.

Mr. Lyon-Caen observed that if protest for nonpayment could be replaced in some cases by a mere statement, the same rule should be applied to the case of nonacceptance.

The committee decided that this question should be reserved.

It was unanimously admitted that the clause, "return without costs," should be a bar to the drawing up by the holder of a protest for nonacceptance.

Mr. Vivante desired to make an observation with regard to the resolution which had been unanimously carried, according to which acceptance subject to restrictions should be considered as equivalent to an absolute refusal, but the acceptor should be bound according to his declarations. Mr. Vivante thought that this rule should be thus interpreted—that the acceptor was to be bound by virtue of the law of exchange or by virtue of the common law, according to the character of the restriction he had made. He could not be bound under the law of exchange unless the restriction was compatible with the principles of the law of exchange; if, for example, the drawee accepted for a date later than that which had been stated in the bill; but such would not be the case if the drawee accepted under the condition that the goods should be delivered to him. It might not be necessary that the law should contain a special provision on this point, but it was desirable that the committee should pass upon it.

The explanations given by Mr. Vivante met with general assent.

Question 12, sections (b) and (c). Against whom should the holder have recourse? Should those against whom recourse is exercised have the choice between giving bond and direct payment, or rather, should the bearer have the right to demand direct payment?

It was unanimously answered that the holder should have the right to exercise recourse against the drawer, the indorsers and their eventual warrantors, and that he might by this recourse demand reimbursement, but not indemnity.

A discussion arose on the question of the calculation of the amount of the reimbursement, in case the recourse was exercised before maturity. Sections I, II, and IV, had considered that a deduction from the amount of the bill should be made; the other sections had not dealt with the case.

But the following difference existed between the proposal of Section I, on the one hand, and the proposals of Sections II and IV, on the other hand. Section I proposed to deduct, except for an agreement to the contrary by the parties concerned, a discount calculated according to the rate of discount which was in force at the place and time of payment, by virtue of law or custom. Sections I and IV proposed to give to the holder the option to calculate the deduction, either in accordance with the banking rate or in accordance with the market rate in force on the day of recourse in the place of payment.

Mr. Fischel set forth the reasons of the last proposal. He did not think it possible to settle the question in a manner entirely satisfactory. But one should be guided by the idea that it was the position of the holder which should, above all, be taken into account. By calculating the deduction in accordance with the banking rate one might inflict on the holder losses which might be very considerable if he had bought the bill at a lower market rate of discount. In the cases, which were rather frequent, in which a considerable difference existed between the two rates the right of recourse for nonacceptance was thus made illusory. The holder would be compelled to keep the bill till maturity if he was not given the right to calculate the deduction, at his option, either in accordance with the banking rate or in accordance with the market rate existing on the day of recourse in the place of payment. Such a regulation would perhaps make worse the situation of the drawer, but he would have only himself to blame, for it should not be forgotten that nonacceptance, as a rule, was due to the party who had issued the bill.

Mr. Vivante, who, in Section II, had proposed to establish a fixed rate, withdrew this proposal. The latter was, however, brought up again by Mr. Nagy, who thought that if each rule involved inconveniences of its own the more simple one should be chosen.

Mr. Hammerschlag supported the opinion of Mr. Fischel. If it was not possible to make a regulation on this point without injuring either the situation of the drawer or that of the holder, there was no doubt that the decision should be in favor of the holder, because the drawer was to be considered as responsible for nonacceptance. Consequently, while safeguarding the interests of the holder, it was necessary to regulate the rate of discount.

Mr. Schneider pointed out that the Russian law provided a fixed rate of 6 per cent.

Count Ehrensvaard stated that the Swedish law had fixed a legal rate of 5 per cent. However, he was ready to support the opinion of the majority.

Mr. Jackson said that the English law contained no definite provision with regard to the case in question. Nevertheless, the British delegation would recommend to the consideration of its Government the proposal made by Germany.

The question next discussed concerned the method of calculation of the deduction in case of the recourse exercised by an indorser.

Mr. Simons gave notice that the report of Section II was not complete. The said section had adopted the following resolution:

The indorser may demand from the drawer and from previous indorsers:

1. The amount which he has paid plus the interest running from the day of reimbursement.

2. The expenses paid by him.

3. A commission of one-sixth per cent.

The rate of interest shall be regulated by the provisions in force in the domicile of the party liable.

Mr. Carlin corrected in the following manner paragraph 2 of the observations made on page 13 of the report of Section I:

For any other reimbursements the rate of discount which shall apply to the deductions shall be the rate of discount fixed by law or custom in the place and at the time of payment. However, it shall be understood that the indorser who has taken up the bill shall always have the right to sue for the restitution of the amount he has disbursed.

He thought that in all cases the rules concerning the first reimbursement should be applied.

Mr. Fischel expressed an opinion to the contrary. The amount disbursed by the indorser was a fixed amount by which he was bound. He was entitled to interest for the delay on this amount, but as only a few days might be in question, it would be convenient to state a fixed and uniform rate.

The chairman suggested that the committee proceed in accordance with the following method:

First, the committee should vote on the question whether or not a legal rate should be fixed in case of the recourse of the holder and of the indorser. If this question was answered negatively, the proposal made by Sections II and IV, with regard to the recourse of the holder, should be considered as adopted. It would then remain to vote on the question whether or not the proposal of Section I with regard to the recourse of the indorser, should be adopted. If the answer was negative, the proposal of Section II should be considered as carried.

This suggestion was assented to.

The question whether a legal rate should be fixed was then put to a vote, the result being the following:

Ayes (2): Hungary, Russia.

Nays (13): Germany, Argentine, Austria, Belgium, Brazil, Denmark, France, Italy, Luxemburg, the Netherlands, Sweden, Switzerland, Turkey.

Great Britain abstained from voting.

Consequently, the proposal made by Sections II and IV was adopted.

The question whether or not the proposal made by Section I was to be adopted with regard to the recourse of the indorser was then put to a vote, the result being:

Ayes (4): Argentine, France, Switzerland, Turkey.

Nays (11): Germany, Austria, Hungary, Belgium, Brazil, Denmark, Italy, Luxemburg, the Netherlands, Russia, Sweden.

Great Britain abstained from voting.

Consequently, the proposal made by Section II was adopted.

Mr. Van Gelderen explained thus the reasons for his votes:

The rate of interest being subject to variations, a fixed rate should not be prescribed by an international law. The law should contain a general principle, which might be this, that in all cases the holder should receive an amount equal to the amount he had paid.

Then the question was taken up whether or not the holder and the indorser should be entitled to a compensation of one-sixth per cent, as Section II had suggested.

Mr. Carlin stated that, in the opinion of the majority of Section I, the uniform law should not fix a compensation; but if the committee judged otherwise, then the section considered that the rate of such compensation should not exceed one-quarter per cent.

Mr. Fischel explained the reasons of the proposal made by Section II. The indorser should be given a compensation for the loss he might have incurred by paying the bill, and so should the holder be given a compensation for the damage which might be incurred by him as a consequence of the nonfulfilment of the obligations assumed toward him. It was always possible in such cases that he had been obliged to resort to a banker in order to be supplied with the money he needed. On the other hand, the great banking houses did not often make use of the compensation, but such a right should be reserved for the sake of the small merchant.

The question whether or not the uniform law should grant to the holder and to the indorser the right to claim a compensation was then put to a vote, the result being an answer unanimously affirmative, with the exception of Great Britain, which abstained from voting.

Next, the question whether or not the uniform law should fix the rate of compensation, was put to a vote, with the following result:

Ayes (11): Austria, Germany, Hungary, Brazil, Denmark, Italy, Luxemburg, the Netherlands, Russia, Sweden, Switzerland.

Nays (4): Argentina, Belgium, France, Turkey.

Great Britain abstained from voting.

The committee adopted without a vote the proposal of Section II fixing at one-sixth per cent the rate of compensation.

Mr. Carlin, on behalf of Section I, proposed a regulation according to which a memorandum should state the different elements of the amount which was the object of recourse. This proposal was carried.

Question 13. Should the law accord special rights to the holder of a bill of exchange in case of the failure of the acceptor (or of the drawee)?

The chairman summed up the reports made by the sections.

Mr. Simons stated that through an error the report of Section II did not deal with the case in which the drawer had prohibited presentment for acceptance. In such a case a protest should not be required.



Mr. Lyon-Caen said that the following questions should be answered:

1. In case of the failure of the acceptor, (a) Should recourse be exercised immediately? (b) And without protest?

2. In case of the failure of the drawee who has not yet accepted, (a) Should recourse be exercised immediately? (b) And without protest?

3. Were there other cases which should be assimilated to the case of failure?

Mr. Hammerschlag said that, in his opinion, in case of the failure, suspension of payments, or insolvency, either of the acceptor or of the drawee, the holder should be entitled to exercise recourse after having drawn a protest.

Mr. Vivante opposed the resolution of Section I, according to which the statement of the cases which might be assimilated to failure should be remitted to the national law. It would be dangerous to grant such a power to each country.

Mr. Nagy was of a contrary opinion. It was not possible to define in the uniform law the cases of insolvency. The uniform law should consider only the case of bankruptcy, and should leave to the national law the function of assimilating other cases to it. With regard to protest, it seemed superfluous, but it should be required, because it was necessary in order to prove insolvency.

Mr. Fischel pointed out that the statement of the case of failure was not always sufficient. In many cases the failure was announced a long time after insolvency; in other cases the failure was not stated, because the assets were not sufficient (to meet the costs of proceedings). However, the right to exercise recourse should be immediate.

Mr. Vivante supported this opinion; according to the laws of several countries there was no failure except with regard to tradesmen.

Mr. Lyon-Caen said he did not think it possible to agree to any expression other than "failure." The duty of determining the other legal methods of establishing insolvency should be remitted to national legislation. Otherwise the States would be compelled to refer in their national laws to things which were unknown to the legislation of the country. The French law, for example, did not know the "suspension of payments" which existed in Germany.

The chairman thought that a general formula should be sought which should cover all the cases assimilated by the different States to failure. He suggested that this question should be postponed until a subsequent meeting and that discussion should proceed upon the other question presented by Mr. Lyon-Caen.

The section unanimously agreed to this point—that, in case of the failure of the acceptor and of a drawee who had not yet accepted, the holder was entitled to exercise recourse.

With regard to the protest, Mr. Carlin stated that Section I did not consider it as necessary. Where a referee in case of need had been designated a different solution was reached, but this appeared in the answer made to question 14.

Mr. Simons emphasized the resolution of Section II, according to which it was optional with the holder to be contented with a mere statement by the assignee of the failure, provided that the date of such a statement was legally established.

Mr. Fischel, supporting this resolution, pointed out that recourse could not be admitted if the failure was not proved by a protest or other reliable document. The domicile of the acceptor might be very remote from the domicile of the indorser, and then the failure of the acceptor was not a notorious fact to the indorser. The admission of recourse without any certain proof of the failure would not conform to the formal character of the law of bills of exchange.

Mr. Jackson stated that the law should in all cases require a protest.

The chairman put to a vote first the question whether or not the uniform law should require a protest for recourse of the holder in case of the failure of the acceptor or of the drawee.

Ayes (8) : Argentina, Austria, Hungary, Denmark, France, Great Britain, Luxemburg, the Netherlands.

Nays (8) : Germany, Belgium, Brazil, Italy, Russia, Sweden, Switzerland, Turkey.

The result of the vote being a tie, the proposal was considered as not adopted.

The committee then unanimously carried, with the exception of Great Britain, which abstained from voting, the proposal of Section II.

The question whether or not recourse should be given when the drawer had fallen into bankruptcy was then taken up.

Mr. Nagy proposed that the question should be answered in the affirmative when bills of exchange were involved whose presentment for acceptance was prohibited by the drawer. Then the drawer was the first party liable, the case being identical with that of failure of the acceptor.

Mr. Vivante opposed this view. Why should recourse be allowed when the drawee was perhaps in possession of the cover and intended to pay?

Mr. Lyon-Caen, on the contrary, supported the proposal made by Mr. Nagy, which was in accordance with French law.

Mr. Fischel joined in the opinion of Mr. Vivante, and pointed out that in many cases the drawee had already received the goods from the drawer, and so should be ready to pay.

Mr. Vivante added that if in such a case it was intended to admit recourse one should be logical in admitting it also in case of the failure of an indorser on whom the holder relied when he took the bill.

The proposal of Mr. Nagy was put to a vote, with the result that, with the exception of Hungary and France, which answered in the affirmative, all the States gave a negative answer.

The sitting was terminated at 12.45 p. m.

#### SIXTH SESSION, JULY 11, 1910.

Chairman, Mr. Asser.

The sitting was opened at 9.30 o'clock a. m.

The chairman recalled the fact that, on the request made by Mr. Lyon-Caen, the discussion on the visa had been postponed in order to enable Mr. Beernaert to furnish particulars on the Belgian legislation and its practical application.

Mr. Beernaert said that Mr. Lyon-Caen had asked the opinion of Belgium on the question of the visa of bills of exchange, both its advantages and disadvantages. The legislation of his country was well known. With regard to relations between tradesmen, it involved for the creditor the right to draw a bill, and it imposed on the debtor the obligation to accept, except for a contrary stipulation. Freedom of contract was the prevailing principle. The bill of exchange was to be accepted on presentment, or, at least, within 24 hours. And it was to be returned, accepted or unaccepted, within the same time.

The question was whether or not it was convenient to provide an exceptional treatment in regard to bills of exchange which were at the same time not subject to acceptance and payable at a certain time after sight. As the period to payment ran from the visa, it was necessary that it should be stated, with its date. This was regulated by article 22 of the Belgian law. The date of maturity was fixed by acceptance, by protest for nonacceptance, or by a dated visa. If the drawee refused to give a visa or did not date it, protest could be made. Such an obligation also existed when the bill was not subject to acceptance.

These provisions seemed sound, from a theoretical standpoint. Should they be sanctioned by the uniform law?

It might be stated that in some countries the practice of issuing bills of exchange not subject to acceptance had been considerably employed. (*Vide* Meyer, p. 85.) If it was desirable that this be made easier, the answer should be in the affirmative. One should be able to say that he did not accept nor refuse to pay, but that he had seen the bill and would explain his intentions at a stated date. But, on the other hand, it might be feared that the visa would lead to confusion, by leading to the belief in an acceptance which did not exist. In fact, an important suit concerning this question had been brought in Belgium. (Re "Credit Lyonnais.")

The question had no real importance, from a practical standpoint. The bill of exchange not subject to acceptance was little known in Belgium, and so was the bill of exchange payable at a certain time after sight. This practice was unknown, as also that of the visa, at Brussels; the case was about the same at Antwerp.<sup>1</sup>

The draft framed some time ago by the Institute of International Law did not make reference to the visa, but the latter had been admitted, without discussion, by the Conference of Brussels in 1888.

Mr. Wurth-Weiler said that it might perhaps be possible to find a plan which would give satisfaction at the same time to those who hesitated to substitute the visa for the protest for nonacceptance, for the purpose of letting the period run concerning bills payable at a stated time after sight (such provision meaning a very important change in their legislation), and to those who wished to maintain the visa on account of its simplicity.

There was agreement, he believed, in remitting to national legislation the regulation of the form of protest. By this, the States which wished to keep the visa might permit, as is already done in Italy and in the Grand-Duchy of Luxemburg, a mere registered declaration of refusal to accept as a new form of making protest. In this manner,

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<sup>1</sup>Acceptance itself had been very reluctantly admitted into business customs.

the date from which the time ran would be fixed by the date of the declaration, which was, in substance only, a kind of visa, but which produced the same effects which arose from protest properly so called, and did not involve the same expenses—to avoid which was the chief aim of the supporters of the visa.

Mr. Fischel saw a certain difference between the two cases. In the case of protest, a refusal to pay or to accept was in question; the refusal to give visa presented a different character. The latter case was, in practice, that of the drawee who wished neither to accept nor to refuse a bill, but who, as it would prejudice nothing, was not inclined to put a visa on the bill.

Mr. Lyon-Caen thought that some confusion had arisen. It seemed to him that Mr. Beernaert had somewhat limited the scope of discussion in referring merely to the bill of exchange which was drawn at a certain time after sight and at the same time was not subject to acceptance. Mr. Beernaert had not referred to the bill drawn payable at a certain time after sight without the clause for nonacceptance. In both cases arose the same necessity—a date from which should begin the delay after sight. The refusal to give a visa could not be assimilated to a refusal to accept, nor consequently be regulated as such. Mr. Lyon-Caen agreed with Mr. Fischel on the practical consequences of such a distinction. The drawee inclined to fix a visa on a bill drawn at a certain time after sight, but without accepting it, was to be met with in practice, notably in the case where he expected to receive the cover, but had not yet received it.

Mr. Beernaert replied that a bill drawn at a certain time after sight and subject to acceptance, which was neither accepted nor “viséed,” should be protested for nonacceptance. Hence the Belgian law implied in such a case the visa.

Mr. Fischel feared a confusion between visa and acceptance. According to the German law, the word “seen,” with the signature of the drawee, was equivalent to acceptance. An innovation introduced into this provision by the uniform law would threaten great disturbance. He should prefer, in the case of bills drawn at a certain time after sight, to suppress entirely the power to insert the clause against acceptance.

The chairman drew the attention of the committee to article 22 of the Belgian Code of Commerce, which had been read by Mr. Beernaert. Acceptance was established by a mere signature; but it seemed that the signature and the date were necessary with regard to bills payable at a certain time after sight.

Mr. Nagy emphasized the distinction between visa and acceptance, which was capable of a wide practical scope. In order to avoid the confusion feared by Mr. Fischel, he suggested that the signature of the drawee on the face of the bill should always be considered as an acceptance, unless the signature should be preceded by the word “seen.”

Mr. Hammerschlag summed up the reasons set forth in support of the visa:

1. It had been supposed that a bill of exchange, payable at a certain time after sight, might also contain the clause, “not to be presented for acceptance;” but such a case occurred so rarely in practice that it might be neglected.

2. It had been supposed that a bill of exchange, payable at a certain time after sight, might be drawn on a merchant for the value of goods which were shipped to him and which he had not yet received at the moment of presentment for acceptance. It must be granted that such a case might occur; but, on the other hand, the system of the visa might give rise to irregular practices. The drawee might affix the visa at a time when the delay granted by law for presentment of a bill payable at a certain time after sight had already expired. Such unlawful agreements between drawee and holder were not to be feared in case of acceptance, because acceptance bound the drawee personally. Hence it should be better not to permit the visa.

The committee rejected, by 9 votes to 6 (Argentina, Italy, Hungary, Luxemburg, Switzerland, and Turkey—Belgium abstaining from voting), the proposal aiming to introduce in the uniform law the visa with respect to bills of exchange drawn at a certain time after sight.

Mr. Cloos requested that the same regulation should be extended to domiciled bills. This request met with general assent.

The chairman suggested that the discussion concerning the assimilation to bankruptcy of other cases of insolvency (question 13) should be postponed till the sitting of the next day. (General assent.)

Mr. Lyon-Caen requested enlightenment on a point which had been left somewhat obscure in the course of the discussion of the committee concerning copies. The copy should state the party who had possession of the original draft, and the holder of the said copy might have a protest drawn for nonpresentment of the original draft.

The "rapporteurs" would be pleased to know what would be the penalty under such a protest. Should it be considered as a refusal of acceptance, giving a right to the amount of the bill, or should it merely afford ground for an action for damages?

Mr. Simons supported the latter solution.

The chairman set forth that a similar question had been put in regard to the question of drafts in sets.

Mr. Fischel said he did not think the analogy was complete. The holder of a copy was not in the same situation as the holder of a duplicate; the copy did not contain all the signatures (especially the indorsements made on the original draft). The damage caused by the nondelivery of the bill was thus the most considerable. On the other hand, the deposit of an original draft, being generally an act of a gratuitous character, it might be feared that by increasing the liability of the custodian it would be less easy to obtain such a service. He was a supporter of the right to begin an action for responsibility based on the general principles of the law, but not on the law of exchange.

Mr. Nagy made a distinction between the action of the holder against the indorsers and the action of the said holder against the depositary, in case the holder of the copy should be denied the right to the original draft. The first action was under the law of exchange, the second was a civil action for damages, with regard to which the court would have to take into account the circumstances of the case.



Mr. Lyon-Caen thought that it ought to be understood from these explanations that the holder would be entitled to two actions: one against the indorsers and the other against the depositary.

Mr. Fischel emphasized the danger involved in the practice of deposits—a too serious responsibility on the part of the depositary. The latter, as a consequence of a theft, of a loss, or of a case of *vis major*, might find it impossible to surrender the original draft. Was it desirable that the uniform law should decide upon this question? Could it not be left to the decision of the courts?

The chairman stated that, in this respect, the courts would examine the circumstances and apply the principles pertaining to the contract of deposit. But, in his opinion, the law should expressly grant to the holder of a copy an action against the depositary, because under the general principles of law such an action would be restricted to the drawer, who alone had contracted with the depositary.

It was not a question, moreover, of aggravating the condition of the depositary; the law should merely recognize the existence of a legal bond between the depositary of the original draft and the holder of the copy.

#### Question 14. Acceptance for honor.

The chairman stated that there was a general agreement that acceptance for honor should be permitted.

Mr. Lyon-Caen desired to provide that one could intervene with regard to a bill bearing the clause, "return without costs."

The chairman stated that on the second point of the question (who might accept for honor) there was, with respect to the case of need, a divergence of views between Sections I and II.

In the opinion of Mr. Simons, the holder should remain free to present the bill to the referee for acceptance, but, once he had made such presentment and the referee had accepted, he would lose his recourse against the indorsers for nonacceptance by the drawee.

Mr. Hammerschlag said that he should prefer to maintain the system of the Austrian law, which obliged the holder to present the bill of exchange for acceptance to the referee, if the drawee had not accepted.

The designation of a case of need should be considered as the issue of a subsidiary draft. The holder who had acquired a bill of exchange indicating a case of need should be obliged to present it, if the occasion arose, to the referee. It happened that bills bearing the designation of a branch office of the firm of the drawer as case of need, were drawn by exporters on remote countries with the intention of avoiding the costs of a recourse, if the drawee did not accept. This intention would be defeated, if the holder was not bound to seek the acceptance of the referee. However, if the other countries should refuse to impose this duty on the holder, Mr. Hammerschlag would not insist, considering that if the holder, according to the uniform law, had the right to demand the reimbursement of the bill in case of refusal of acceptance, it would not be fair to compel him to content himself with the acceptance of the referee.

Mr. Fischel suggested that, in practice, an inconvenience might occur. One would be obliged, when applying to the referee, to make it known to him implicitly—or "*expressis verbis*," if he offered acceptance—that payment, and not his signature, was required from

him. Mr. Fischel, by such a statement, did not intend to oppose the system which consisted of making presentment to the referee for acceptance optional; he merely made it for conscience sake.

Mr. Lyon-Caen inquired what would be the effect of a clause bearing the words "in case of need, present for acceptance to Mr. ———," which transformed the power of presenting the draft to the intervenor for acceptance into an obligation.

Mr. Simons declared that all the consequences of such a clause should be examined. It involved an obligation, whereas the system of the law created merely an optional power. In consequence, he requested that discussion on the question stated by Mr. Lyon-Caen should be postponed till a subsequent sitting.

The chairman consulted the committee, which agreed to the postponement; he proposed to adopt the text voted by Section II. (Vide the report.)

The chairman passed to the following question:

For whom may payment for honor be made?

Mr. Cloos stated that the drawee might accept for honor.

The chairman inquired if the holder would be bound to accept him as the party paying for honor.

Mr. Lyon-Caen said that Section I had decided that the holder should be bound to admit as intervenors the parties who had signed the bill.

Mr. Simons pointed out that the drawee, by accepting for honor changed the situation of the holder; such a change should not be imposed on him, as it made him lose certain of his securities.

Mr. Nagy said he thought it necessary to admit such an intervention, because if acceptance for honor made by the drawee caused the loss of certain guaranties, it gave to the holder the securities which arose from the acceptance of the drawee.

The chairman proposed to adopt the answer made by Section II, which gave to the drawee the right to accept for honor without the holder being obliged to accept him.

The proposal met with general assent.

Effects of acceptance for honor.

The chairman stated that the committee agreed to the adoption—saving changes with regard to language—of the answer given by Section II concerning the form and effects of such an acceptance

Question 15. Guaranty (aval). Should the law recognize guaranty?

The chairman stated that all sections had answered affirmatively.

Mr. Nagy pointed out that a distinction should be made. There might be found on the bill of exchange a mere cosignature, or a signature given expressly as a bond. In the first instance the cosigner had no recourse against the party who had signed in the first place. Should the same distinction be made in the uniform law?

Mr. Simons replied that in Germany the question had been first considered as a question of civil law; but fundamentally the distinction made by Mr. Nagy was rather of a theoretical character, because the difference between the two cases existed only in regard to the defenses which might be set up against the cosigner. Therefore it would be preferable that the law should grant the recourse in all cases.

The committee concurred in this opinion.

With regard to the question by whom guaranty might be given, the answer made by Section I was unanimously agreed to.

"The guaranty may be given by a third party or by a party liable on the bill of exchange, provided that the security of the holder shall be thereby augmented."

The question of the form of guarantee was then taken up.

The chairman summed up the answers given by the sections.

Mr. Vivante, in order to avoid misunderstandings, proposed that the signature of the guarantor should be completed by a special statement—"for guaranty" (*par aval*) or any equivalent formula—indicating the nature of the obligation assumed by the signer.

Mr. Schneider supported the opinion of Mr. Vivante, which was in harmony with a provision of the Russian law.

Mr. Simon objected that, according to the practice of trade, every signer is considered as responsible for payment. Supposing that the bill contained a full set of indorsements, and besides a mere signature. If a special statement was required for guarantee, this signature, contrary to commercial usages, would be of no consequence.

Mr. Fischel said that under the system of Mr. Vivante, it would be necessary to provide for the case in which the special statement should have been omitted.

Mr. Vivante replied that in the case where it was not possible to ascertain whether an indorsement or a guarantee was in question, the signature should be declared null.

The question was put to a vote, the result being the following:

Ayes (7): Argentina, Belgium, Brazil, Italy, Russia, Turkey, Switzerland.

Nays (7): Austria, Hungary, France, Great Britain, Luxemburg, the Netherlands, Sweden.

Germany and Denmark abstained from voting.

The vote resulting in a tie, the chairman suggested that the question should be taken up again in a subsequent sitting. The suggestion met with general assent.

The committee discussed the proposal made by Section I, according to which the national laws might assimilate guaranty given by a separate document to guaranty inscribed on the bill of exchange.

Mr. Ernest-Picard declared that such a proposal agreed with the French law and practice. For the sake of the success of the uniform law in France, the farmers and the small tradesmen and manufacturers should not be deprived of the advantages of guaranty given by separate document. Such a guaranty was as a rule given to the banks for an aggregate of transactions, and, owing to the supplementary security derived from this, favorable conditions of discount could be assured to this interesting class of drawers and signers of drafts. The uniform law might remit to the national law the care of providing for guaranty given by separate act.

In reply to an inquiry made by Mr. Beernaert, Mr. Ernest-Picard added that guaranty given by separate act involved the same consequences as did guaranty on the bill itself, and in reply to a question put by Mr. Simons, Mr. Ernest-Picard replied that the holder was able to assert his rights only by exhibiting both the bill and the separate document.

Mr. Nagy pointed out that in France there was no special procedure in regard to actions arising from the bill of exchange, but that in the countries where such procedure existed, as in Germany, in Austria, and in Hungary, the separate document could not be used as a ground for them. It was necessary, therefore, to remit the question to the national laws.

The chairman drew the attention of the committee to the conflicts of law which might result from such provisions of the national laws. Should a separate document, in order to be valid, be written in the country in which it was permitted by law, or should it suffice that the bill was payable in that country?

Mr. Simons declared that he would be able to support the proposal made by Section I, provided the conflicts pointed out by the chairman could be regulated. He suggested, therefore, that the question should be remitted to the committee on private international law.

Mr. Lyon-Caen pointed out that this question of conflicts of law was of slight importance. There was general agreement that guaranty by a separate document was valid, either by virtue of the law of exchange or by virtue of the civil law. There would exist a difference only with respect to defenses and the procedure. In consequence, the question should be referred to the committee on private international law. (General assent.)

The question what should be the effects of guaranty was then taken up.

The president observed that on this point all the sections were in accord.

On the request of Mr. Vivante, the committee came back to the discussion on guaranty given by separate document. Mr. Vivante said that it would be in conflict with the principles of the law of exchange to grant recourse to a person who did not figure on the bill.

Mr. Nagy objected that the case was the same if recourse was exercised by an assignee or by an heir.

Mr. Vivante was of a contrary opinion. The guarantor had a right of his own, whereas the assignee and the heir had merely the right that belonged to those whom they represented.

Mr. Simons made a reservation, on behalf of Germany, of the right not to admit guaranty by separate document.

Question 16, concerning maturity, was taken up.

The chairman stated that all sections had agreed upon fixing maturity in the following manner:

1. At a fixed day.
2. At a certain time after a given date.
3. At sight.
4. At a certain time after sight.

In regard to bills of exchange payable at a fair, there were some divergences.

Mr. Schneider said that such bills of exchange were much used in Russia. He asked, therefore, that the uniform law should mention such bills, but should leave their regulation to the national laws.

Mr. Carlin pointed out that, in admitting bills of exchange payable at a fair, it ought to be fixed by the uniform law on which day of the fair maturity should take place. He suggested with regard to

this that the resolution adopted by Section I should be adopted, according to which the bill would be due on the day previous to the day on which the fair closed, or on the day of the fair, if the latter lasted only one day.

Mr. Lyon-Caen suggested that this entire subject matter, with the details which it involved, should be left to the national laws. However, it should be understood that no other bills were in question except bills payable at a fair, which were drawn on a country where such bills were permitted by the national law.

The chairman stated that there was a general agreement in not permitting "usances."

With regard to days of grace, Mr. Lyon-Caen stated that in France the courts had the power to grant days of grace to bona fide debtors. Hence, it would be better not to adopt the proposal made by Section I, which prohibited the courts from granting days of grace. The committee adopted this opinion.

Section I had put a new question:

What should be decided when a bill of exchange, containing no special stipulation, is payable in a country of which the calendar is different from that of the place of issue of the bill?

The committee decided to refer the question to the committee on form.

The chairman submitted for discussion the question proposed by Section I:

When should a bill of exchange be presented which matures on a holiday?

The answer was the following:

If a bill matures on a legal holiday, it is payable on the next subsequent business day.

Mr. Lyon-Caen stated that in France there were days which were not legal holidays, but on which, nevertheless, payment could not be demanded—for example, a business day preceded and followed by a legal holiday, as also the Monday following a Sunday which was at the same time a legal holiday. In order to protect such customs, Section I wished to reserve to the national laws the power to assimilate the days on which payment could not be demanded to legal holidays. This proposal was carried.

A discussion occurred on the following question:

Within what period should bills of exchange payable at sight or at a certain time after sight be presented?

With the exception of Sir Mackenzie Chalmers, who gave notice that in England drawing at a certain time after sight was not known, but that bills were to be presented there within a "reasonable time," the committee agreed to grant a delay of six months running from the date of issue and not subject to augmentation on account of distance.

With regard to the question whether this delay might be shortened or lengthened, Mr. Carlin proposed to grant to the drawer the right to stipulate that this delay might be shortened or lengthened.

Mr. Vivante, in accordance with the proposal made by Section II, wished to recognize for the drawer the right only of abridging such delay. It did not seem admissible to him that the drawer should be able to indefinitely prolong this delay.



Mr. Nagy did not see any reason, grounded on general interest, for prohibiting the drawer from prolonging the delay.

Messrs. Simons and Ernest-Picard said that, in practice, there was no occasion to fear abuse of such a power.

Mr. Beernaert suggested that a maximum of one year should be granted; any longer extension should be reduced to this maximum.

After this proposal had been carried, Mr. Jitta inquired if the drawer alone was entitled to modify the delay of six months.

Mr. Simons replied that the indorser should also have the right to shorten the delay, because he had the right to restrict his guaranty as it pleased him.

The principle of this question having already been decided upon, in the discussion on indorsement, the committee remitted to the "rapporteurs" the task of putting it in suitable form.

Question 17. When should payment be demanded and effected?

The chairman summed up the answers of the sections to this question.

Mr. Lyon-Caen stated that there was an agreement on the right of the holder to present the bill on the very day of maturity, but the question was if he was bound to do so. The French Code of Commerce imposed formally such an obligation; the holder who did not comply with it was liable to a suit for damages.

Mr. Simons stated the differences existing from this standpoint between the German and French legislations. These differences arose from the fact that the German law granted to the holder his distinctive rights, the exercise of which was subject to the law, while the French law considered him as an agent having obligations with regard to the person giving authority to him. Mr. Simons recalled that, on the other hand, the French law did not allow the drawing of protest before the day subsequent to the day of maturity, whereas the German law permitted it to be drawn on the very day of maturity. In presence of these two kinds of divergences he proposed a compromise by which the French law should abandon the obligation of the holder to present the bill on the day of maturity, and the German law should abandon the power granted to the holder to draw up the protest on the day of maturity.

Mr. Nagy explained the system in force in Austria, in Hungary, and in Germany, according to which the holder might present the bill, without being obliged to do so, but must draw protest at least on the second day after maturity.

Mr. Fischel stated that there were important reasons for adopting the German system. In many cases the bill was paid only at the time the notary came for drawing protest. For this reason the periods for presentment and for protest should be the same.

Mr. Wurth-Weiler corrected the response given in the report of Section IV, which should be understood as follows:

Payment might be demanded, but in such a case should be made on the day of maturity.

Sir Mackenzie Chalmers stated that in England presentment on the very day of maturity was obligatory.

The committee adopted unanimously the proposal of Mr. Simons.

The chairman, citing the case in which the bill having not been paid on presentment but only at the time of the notice of protest,

inquired on whom should devolve the expenses involved in the preparation of the protest.

Mr. Simons replied that the question could be resolved in three different ways:

1. The expenses were a part of the amount to be paid by the drawee;
2. By virtue of the civil law the drawee was bound to pay the expenses, but not at the same time as the amount of the bill;
3. The expenses were devolved upon the holder.

The committee took no resolution on this subject.

Question 17. (b) Should the holder be compelled to receive payment before maturity?

The following answer, proposed by Section I, was adopted:

No, unless there is a refusal to accept by the drawee, bankruptcy of the acceptor, or events assimilated to bankruptcy by national legislation.

Question 17. (c) What rules should be established by the law with regard to the validity of payment at maturity, or before maturity.

The chairman summed up the reports.

Mr. Vivante criticized the terms which were to be found in the answer made by Section I:

In case of payment the drawee is presumed to be fully discharged, regulation \*concerning this subject being remitted to national legislation.

Mr. Lyon-Caen stated that there might be cases in which, notwithstanding payment, the drawee should not be discharged—for example, in case he paid in bad faith to a person incapable, to a thief, or to a forger. For this reason one could only establish a presumption, which might be destroyed.

Mr. Vivante could not admit this reason as decisive, because such cases might present themselves upon the occasion of any payment. It was a general principle that he who pays should inform himself of the capacity of the person to whom he pays.

Mr. Simons also opposed Mr. Lyon-Caen's statement. The question involved was of a general character, and could not be specially resolved with regard to the law of exchange.

The sitting was terminated at 12.45 p. m.

#### SEVENTH SESSION, JULY 12, 1910.

Chairman, Mr. Asser.

The sitting was opened at 9.30 a. m.

Mr. Schneider read the following statement, concerning the question previously discussed:

What should be the provisions of the law with reference to the maturity of bills payable at a fixed day (at a fair)?

Section II thought proper to leave the regulation of bills of exchange payable at a fair to the laws of the different countries.

Section I proposed to declare that a bill of exchange payable at a fair was due on the day previous to the closing day of the fair, or on the day of the fair, if it did not last more than one day.

Such a provision conforms to the Russian law, and for this reason I consented to its insertion in the uniform law, but to my regret, I omitted to explain that the Russian law recognizes two kinds of bills payable at a fair: (1) Payable at such a fair; and (2) payable at such a fair at sight.

The proposal of Section I related to the first kind of bills, the bills of the second kind being payable on the day of presentment for payment at any time during the continuance of the fair.

In my opinion, it would not be convenient to insert such a provision in the uniform law, and the committee should limit itself to the proposal made by Section II—to leave the regulation of the question to the laws of the different countries.

The chairman acknowledged the statement made by Mr. Schneider.

Mr. Lyon-Caen pointed out that, with regard to the question of guaranty (aval), Section I, in accordance with the draft proposed by the German delegation (art. 61), had admitted partial guaranty. The report should specify the solutions intended to be given by the law to the difficulties which might arise on this question.

The chairman acknowledged the statement made by the honorable "rapporteur," and submitted for discussion the question which had been reserved at the previous sitting.

With regard to the special rights to be granted to the holder, should the insolvency of the drawee, when not legally established, be assimilated to his failure? It was true that in practice the absence of such an assimilation involved difficulties which were often great; but, on the other hand, the notion of insolvency was in itself so vague that it seemed dangerous to attach legal consequences thereto. While recognizing that strong arguments might be made in favor of either of the two systems, the chairman hesitated to give his vote to the system of assimilation.

Mr. Simons proposed that the discussion should be postponed until the form and effects of recourse were made more specific.

Mr. Nagy objected to this proposal of postponement. The principle should be laid down and the examination of details be taken up later on.

Mr. Fischel thought that this work would be useless, for it would be necessary to return to the question when the committee should come to deal with the procedure of recourse.

Mr. Lyon-Caen thought that the entire procedure should be remitted to national legislation. If Mr. Fischel intended to speak of the object of recourse, then he inquired what was meant by it. In his opinion the holder at maturity could exercise recourse against the signers of the draft only for its amount. If the amount of the recourse was different then he requested the postponement of the discussion.

Mr. Fischel said that he had in view merely the form of the recourse.

Mr. van Gelderen stated that he would vote for the motion for postponement, which seemed to be necessary for some delegates, in order that the question might be studied.

Mr. Vivante inquired if the chairman, as a consequence of his statement, was not inclined to make a proposal.

The chairman declared that his proposal could be summed up as follows:

1. Insolvency, when legally established, should be assimilated to bankruptcy.

2. The national law should indicate the cases of insolvency which possess such a character.

Nevertheless, he gave priority to the motion of order made by Mr. Simons.

The committee, on being consulted, decided to postpone the discussion until the next day.

The chairman submitted again for discussion the question of the form of guaranty:

Should the uniform law prescribe the word "guaranty" (aval), or any equivalent formula, or should it be satisfied with a mere signature?

Mr. Vivante was a supporter of the expression "guaranty," or some other equivalent. He considered it as necessary in order to make clear the obligation involved by each signature; a signature not preceded by the word "guaranty" should be null.

Mr. Simons said that, as all which contributed to make the bill more clear should be adopted, he supported the opinion of Mr. Vivante. The uniform law should determine the cases in which a signature placed on the back of the bill did not constitute an indorsement.

Mr. Nagy opposed the views of Mr. Vivante. According to the German law one was bound by virtue of the bill of exchange, even if there was only one signature on the back of it; a fortiori one was bound by a signature preceded by the word "guaranty." The proposal of Mr. Vivante would tend to lessen the force of the bill of exchange, because it proposed to nullify the signature given for guaranty and not preceded by the term "guaranty." This was in contradiction with many systems of legislation. Mr. Vivante had defended his proposal by invoking the necessity of avoiding a misunderstanding concerning the scope of the obligation which was involved by a signature. This was a matter of precaution for the signer. It was not the function of the uniform law to protect those who gave their signature lightly.

Mr. Fischel insisted upon the necessity of making concessions, especially in the direction of clearness and precision. If the new law required that the guarantor should place above his signature an expression required by the said law, the guarantor who actually was accustomed to place there a mere signature would comply with the new prescription, even if such a prescription was contrary to his practice. The committee had decided that a mere signature placed on the face of the bill should constitute acceptance, and that a signature placed on the back should be an indorsement. It would, therefore, be convenient to make clear the meaning of any other signature. Consequently, a signature given as a guarantee should, by a formula accompanying it, make itself distinguishable from a signature given for acceptance or for indorsement.

Mr. Hammerschlag said that, it being understood that the uniform law should require the formula setting forth guarantee, the result of such a requirement would be that if somebody had signed on the face of the bill, and if this signature was not that of the drawee, it would be considered as null. Consequently, the proposed rule should be modified with respect to this point, that a signature placed on the face of the bill, when not the signature of the drawee, should be considered as a "guarantee."

Mr. Carlin said that it would be necessary, in order to succeed in framing a uniform law, to abandon here and there provisions of the national laws.

Mr. Simons inquired how it would be possible to cancel a signature placed on the back of the bill and not accompanied with the statement of guarantee. How could it be proven that it did not involve an indorsement in blank?

Mr. Vivante replied that the signature which could be considered as involving an indorsement in blank should have force as such. If the series of indorsements was full, a mere signature placed on the back of the bill would be considered as null. The same solution would have to be adopted with regard to a signature, other than that of the drawee, which should be placed on the face of the bill. Such a solution was required by logic.

Mr. Ernest-Picard found danger in increasing the causes of nullity of signatures. A signature other than the signature of the drawee, if placed on the face of the bill, should be considered as a guarantee; if placed on the back, it should have the force of an indorsement.

Sir Mackenzie Chalmers stated that, according to the Anglo-Saxon law, a mere signature was considered as given for guarantee.

Mr. Vivante said he was inclined, by way of concession, to admit as a guarantee a mere signature placed on the face of the bill.

The chairman put to a vote the proposal made by Mr. Vivante, which was summed up as follows:

The uniform law shall require, besides the signature, the term "guarantee"; but if placed on the face of the bill, a mere signature shall be sufficient.

The proposal was unanimously carried, with the exception of Great Britain, which cast a negative vote.

Mr. Lyon-Caen, as "rapporteur," requested that the party for whom guarantee was given should be stated.

The chairman replied that, except for proof to the contrary, guarantee should be considered as given for the drawer.

Mr. Nagy considered that it should be presumed to have been given in favor of the acceptor.

Mr. Vivante declared that practice had shown the serious inconveniences involved in the view of Mr. Nagy. It was not possible to presume that guarantee was given for the acceptor, because if acceptance was lacking, the presumption would fail. It would also be dangerous to presume that guarantee was given for the drawer, or if the bill was accepted, for the acceptor, because the holder could not know whether the bill bore the signature of the acceptor or not—at the time of guarantee—and would not know whether or not he should have a protest drawn in order to maintain his right of action against the guarantor. For these reasons he supported the solution suggested by the chairman.

The discussion of question 17 was then taken up:

(d) Should it be admitted that, except for a contrary stipulation in the bill of exchange, payment may be made in money or in bank notes having legal circulation at the place of payment?

Should the law stipulate at what rate (in default of a special stipulation in the bill of exchange) the value of the bill should be calculated if it contains the indication of an amount in a different money from that of the place of payment?

The chairman stated that the first part of this question had been unanimously answered in the affirmative. With regard to the second, he informed the committee of the distinctions made by Section I.

Four chief cases were to be considered:



1. If the amount of the bill was indicated in the money of the place of payment, there was no doubt that the bill was payable in such money.

2. If the amount of the bill was indicated in the money of the place of issue, it might be paid in the money of the place of payment. In this case, the rate of exchange should be calculated according to the quotation, on the day of maturity, of sight drafts drawn from the country of payment on the country of issue.

It did not seem necessary, in view of the complexity of the cases which might arise, to provide more definitely for the method of calculation of the quotation of the day. This was a question which was to be resolved by banking usage.

3. If the amount of the bill was indicated in money of a country different from both the country of issue and the country of payment, the bill might also be paid in the money of the country of payment. The rate of exchange should be calculated according to the quotation, on the day of maturity, of bills drawn at sight from the country of payment on the country whose money was indicated.

4. If the bill indicated its amount in a money which bore the same name in the country of issue and in the country of payment, but having a different value, it was proper to admit that the bill referred to the money of the place of payment.

The chairman stated that the first three cases could also be found in the reports of the other sections; the fourth one was stated for the first time. He proposed that it should be adopted.

Mr. Ernest-Picard said that the idea of Section I was to leave to the banks the solution of the difficulties which might be involved in fixing the rate of exchange.

The chairman pointed out that the question of the rate of exchange with regard to sight bills had not been provided for by the law of the Netherlands and that this omission had led to serious difficulties.

Mr. Vivante requested that the question should be dealt with, whether or not a creditor might, by a mutual agreement, exempt himself from the obligation to receive payment in money having forced circulation (*cours forcé*).

The chairman pointed out that the question under discussion was different from that which had been raised by Mr. Vivante. It concerned payment of a bill in a money different from that of the country where the bill was drawn.

Mr. Vivante insisted, however, upon deciding whether or not the creditor should be bound to accept a payment made in the money of a place where there was a forced currency. This was a question of a public character; one should not be able to derogate from this rule by a convention, because it concerned national sovereignty.

Messrs. Simons, Hammerschlag, and Nagy said that this was a question which fell within the scope of the law pertaining to payment in general. It ought not to be regulated by the uniform law, but should be determined by financial legislation.

According to the opinion of Mr. Lyon-Caen, it was proper to distinguish between legal circulation and forced circulation. All that had been said referred only to legal circulation. One might validly stipulate that payment should be made in specie in lieu of bank

notes, but when forced circulation had been enacted such a stipulation would be null as contrary to the rights of sovereignty of the country in which payment was made.

Mr. Fischel stated that he did not think it useful to specify exactly the rate which was to be taken as a basis of calculation. If the law prescribed the rate of the day of maturity, such a prescription did not take into account that there were places where exchanges were quoted only three times a week. If the law prescribed the quotation of the nearest place of exchange, in case there had been no quotation in the place in question, this could lead to the result that in many cases the quotation at Hamburg would have to be taken as a basis for a bill drawn on Berlin. Under such circumstances it seemed to him preferable to use the formula of the German law (art. 37), which declared that the bill of exchange "was payable according to its value at maturity" (*nach ihrem Werte zur Verfallzeit*), and to leave it to local practice to determine methods of calculation. Mr. Fischel stated that he feared no difficulties if it was permitted to fix the rate according to local practice. He recalled also the provision of paragraph 2 of article 46 of the German draft, which said:

The bill of exchange in which the rate of exchange has been indicated by the drawer or by an indorser, in accordance with authority given by him on the bill, shall be paid according to such rate, in the money of the country.

The chairman suggested that the answer to the question should be framed in accordance with the desire set forth by Mr. Fischel.

Mr. Schneider declared that he could not give his adhesion to an imperative clause, the matter being regulated in Russia by a different provision.

Mr. Hammerschlag requested that the uniform law should not concern itself with the question whether or not it might be stipulated that payment should be made in specie in case there was forced circulation. Such a matter could be regulated only by the financial legislation of each country.

Mr. Simons supported the proposal of Mr. Hammerschlag.

Mr. Ernest-Picard said that the stipulation set forth in the Questionnaire had validity only in case of legal circulation.

Mr. Simons objected that the question concerned national sovereignty. It was therefore pertinent to leave to national legislation the function of resolving the difficulty.

Mr. Lyon-Caen said he did not see why the parties should not be able to agree upon payment in specie. This was a mere application of freedom of contract.

Mr. Fischel, recalling the observation made in Section II by the German delegation, supported the proposal made by Mr. Hammerschlag, which he understood involved the suppression, not only of the words "except for a contrary stipulation," but the whole of question 17 (*d*), paragraph 1. It was a matter which should be left to the financial laws of each country. This manner of proceeding left unimpaired freedom of contract, especially in the cases pointed out by Mr. Lyon-Caen.

Mr. Lyon-Caen considered that the Questionnaire, not being the work of the conference itself, could not be changed. There was entire agreement to the statement that a bill was payable in the money

of the country on which it was drawn. Disagreement was limited to the question, "Should a stipulation to the contrary be admitted?" France answered in the affirmative, but other countries could prohibit such a stipulation.

Mr. Fischel pointed out that the committee should attempt to provide only for the general rule—that payment should be made in money or bank notes having legal circulation in the place of payment. The question whether or not one might derogate from this rule by a special contract should be left to national legislation.

The chairman proposed to the committee to remit to the "rapporteur" the duty of indicating that the conference did not intend to deal with questions concerning the financial laws of each country. (General assent.)

Question 17. (e) Should the law concern itself with partial payment of a bill of exchange, either by permitting it or forbidding it?

Mr. Ernest-Picard stated that Sections I and II admitted partial payment. In France, it was not permitted—for two reasons: First, it was feared that bad payers would avail themselves of it in order not to discharge themselves fully, and everything which strengthened respect for payment at maturity was held as very important. Secondly, partial payment involved some inconveniences from a practical standpoint. Usually, it was an agent of a bank or of the post office who was entrusted with the collection. Neither the one nor the other was qualified for accepting a partial payment, from whence would arise delays and complications. In order to obviate as far as possible such inconveniences, he suggested that partial payment should be made at the domicile of the holder or in the hands of the bailiff, if the bill was subject to protest.

Mr. Nagy did not accept the views of Mr. Ernest-Picard. If partial acceptance was admitted, it should be the same with partial payment.

Mr. Lyon-Caen said he agreed with Mr. Nagy as a matter of principle. Partial payment should be admitted; but the proposal made by Mr. Ernest-Picard tended merely to limit its inconveniences for the holder of a bill.

Mr. Nagy stated that under such conditions he could accept the proposal made by Mr. Ernest-Picard, provided that the right was recognized for national legislation to restrain its scope.

The proposal made by Mr. Ernest-Picard was then adopted.

Mr. Ernest-Picard suggested that a provision similar to that of the German draft should be adopted with regard to recourse in case of partial payment.

Mr. Simons requested that the committee should adopt the provision of the German draft, according to which, if recourse had been exercised in consequence of nonacceptance of a part of the amount of the bill, the party liable could only require that the payment of the said part should be stated on the bill, and that a receipt should be given to him for it.

This was adopted.

Question 18. (a) By whom and for whom should payment for honor be permitted?

The chairman read the reports of the sections.

"By whom?" The committee accepted the answer made by Sections I and II.

(The drawer and each indorser may designate a referee in the bill of exchange.)

"For whom?" For any party bound by virtue of the bill.

Mr. Nagy pointed out that the acceptor could not indicate a referee.

Mr. Schneider said that, in Section II, he had proposed to admit that payment for honor might also be made in favor of the acceptor. He maintained his proposal, referring to the votes of all the other sections.

The committee adopted his views.

"When?" After the protest or its equivalent.

New question. In case several persons offer to pay for honor, which shall be preferred?

The person whose payment shall lead to the greatest number of discharges of parties liable.

In the case (very rare) where several intervenors should discharge an equal number of parties liable, the option shall be left to the party for whom payment for honor takes place.

Question 18. (b) Form of payment for honor.

The payment should be set forth in writing. It should not be necessary to state it in the protest.

Mr. van Gelderen, who had alone opposed this solution in Section I, joined the majority.

(c) Effect of payment for honor.

Whoever pays for honor shall be subrogated to the rights and recourses of the holder against the party for whom he has intervened, the parties liable previous to the latter, and the acceptor. Subsequent parties liable shall be discharged.

Mr. Simons objected to the word "subrogated." In his opinion, the intervenor had a right of his own.

Mr. Lyon-Caen replied that "subrogated" was the legal term.

Mr. Carlin, with reference to the report of Section I, noted that the payer for honor was not able to indorse the draft. He pointed out that this was an exception to the rule which permitted indorsement subsequent to maturity.

Question 19. (a) What formalities should be fulfilled by the holder as the condition of the right of recourse?

The chairman summed up the reports; he stated that the function of regulating the form of protest or declaration might be remitted to national legislation. He inquired if such was not the solution set forth by Section I.

Mr. Lyon-Caen answered in the affirmative. Section I wished merely that the uniform law should make the declaration obligatory.

The chairman thought that entire freedom should be left to the national laws with regard to this question.

Mr. Simons supported this opinion.

Mr. Vivante insisted, on the contrary, that the uniform law should deal with the declaration and should prescribe the registration of the declaration of refusal within the delay granted for protest. The two additional days granted by the Italian law for the registration of the declaration had been the cause of abuses.

The chairman suggested that the national laws should be left entirely free with respect to the use of the declaration, while the uniform law should prescribe that declaration should be subject to the same delays as protest.

Mr. Simons inquired if the declaration was much used and if it could not be excluded.

Mr. Vivante strongly objected to this. The declaration involved important advantages, for instance, in case of failure it avoided costs and expenses.

Mr. Fischel thought that declaration should be admitted only in case of failure; he considered that it would not be proper to go further.

The chairman pointed out that in that case everything would remain in statu quo.

Mr. Fischel replied that the aim of the uniform law should be to give more security; from this standpoint the declaration was dangerous and could not be admitted except in case of failure.

The chairman repeated that, in his opinion, the declaration should be neither imposed nor prohibited by the uniform law. However, he maintained that a declaration, signed by the principal party concerned, gave more security than a protest drawn up by a public officer.

Mr. Schneider pointed out, as opposed to the principle that the protest or declaration could not be made after the expiration of the time granted for presentment of the bill of exchange, that according to the law of his country, protest might be drawn on the day subsequent to the expiration of the stated time.

This was explained by the provisions concerning protest. The bill of exchange was presented to the notary on one of the days granted for presentment of the bill to the drawee; the notary presented the bill to the latter on the same day and drew up a protest if payment was not made at his own house on the next day before 3 o'clock.

The chairman said he wished that, for the sake of conciliation, Russia would consent to give up these provisions.

Mr. Lyon-Caen took up again the declaration. Should it be admitted in case of refusal of acceptance?

The chairman answered in the affirmative.

Mr. Lyon-Caen stated that, with regard to drafts at a certain time after sight, the dated visa had not been admitted; in admitting the declaration one would come back to the dated visa.

The proposal made by the chairman, leaving freedom to the national laws to assimilate the declaration to the protest, was then adopted.

When should protest be made?

The chairman read the reports of the sections.

Mr. Fischel made a remark concerning the report of Section I, which said that protest should be made at least on the second business day following maturity. It was important to know precisely what was meant by this. He suggested that it should be clearly stated that the time should run from the day "on which payment might be demanded" (not from maturity). For example, a draft maturing on a Sunday was payable on Monday—the last day available for



drawing up a protest should be Wednesday, not Tuesday; if Wednesday was a holiday a valid protest might be drawn up on the next business day.

Mr. Wurth-Weiler said that in Luxemburg the delay was prolonged only if the last day was a holiday.

Mr. van Gelderen stated that the Argentine law was identical with the law of Luxemburg. However, by way of conciliation, he was inclined to support the proposal made by Mr. Fischel and invited Mr. Wurth-Weiler to imitate him.

Mr. Wurth-Weiler consented to do so.

The proposal of Mr. Fischel met with general assent.

Place of protest.

Mr. Simons thought that the protest should be made in the place of payment. This was agreed to.

Mr. Lyon-Caen took up again the question of the declaration. Should the signature of the domiciliataire (person at the domicile of whom payment is to be made) or of the referee be considered as sufficient?

Mr. Vivante replied that the signature of the referee should be sufficient, but not that of the domiciliataire.

Mr. Nagy pointed out that the domiciliataire might live in the same place as the acceptor. Where was protest to be made in such a case? He supported the opinion of Mr. Simons.

Mr. Carlin stated that the opinion of Section I was the same.

Mr. Nagy declared that he joined also in this opinion, although his national law held to the contrary.

Question 19. (b) Should notice of default in payment be given to the obligees (indorsers and drawers) and within what time?

The chairman read the report of Section I and asked the opinion of the "rapporteurs" of the other sections.

Mr. Nagy (Section III) inquired who ought to give notice of protest—the holder and the indorsers themselves or the public officer who had drawn the protest? The German and Hungarian system seemed hardly practical. According to its provisions the public officer could give notice of protest to all the parties liable at once.

Mr. Nagy sought guidance from the French law of 1906, which, however, merely prescribed notice to the drawer. The Russian system was about the same.

The "rapporteurs" of the other sections supported the German system.

Mr. Simons said that each State was entirely free to prescribe to its agents, by a regulation, that they should give the notices that seemed to such State to be convenient. But such a prescription should not tend to discharge the holder from the obligation imposed on him by the uniform law of giving notice of protest. Assuredly, neglect of such an obligation should not involve a liability to damages in case the previous indorsers should have already received a notice from the public officer. But if the obligation of the holder was abolished and devolved upon public officers, who might not be solvent, such a policy would involve great inconveniences. At least it should be required that the State assume full responsibility for its agents.

Mr. Vivante was opposed to the proposal of Mr. Nagy. How could the public officer contrive to make out signatures which were often illegible?

Mr. Schneider explained that, in Section II, he had joined in the proposal made by the German delegation concerning notice, but at that time he did not know of the Hungarian draft, which proposed the system adopted by the Russian law and recommended also in the draft of Dr. Meyer, i. e., the system of notice by the public officer entrusted with the drawing of the protest. This law had not, up to the present time, given rise to difficulties, which was the reason he thought it useful to continue it in force.

Mr. Hammerschlag seconded Mr. Vivante. According to the system advocated by Mr. Nagy many of the parties liable would not receive notice.

Mr. Simons recalled that in Germany the post-office agents were authorized to draw up a protest; hence it would be impossible to introduce such a system there.

Count Ehrensvard suggested the adoption of the German system, and to add to it the obligation of the holder to give notice to the drawer.

Mr. Fischel supported the proposal of County Ehrensvard and objected to that of Mr. Nagy, which would involve an increase of costs and expenses and give rise to the difficulties pointed out by Mr. Vivante. Moreover, the public officers should be made responsible in case of negligence; but in case of a draft, of which the amount was important, such a responsibility would be illusory. He hoped that the Russian law could be modified and that thus uniformity of legislation, which was very desirable on this subject, could be realized.

Mr. Lyon-Caen inquired which should be the time for giving notice to the drawer. Should it be two days?

Mr. Fischel replied that the German system did not recognize the delay of two days; the amendment of Count Ehrensvard pertained to this system.

Mr. Lyon-Caen considered the amendment of Count Ehrensvard as very ingenious; however, it involved a complication which would be prejudicial to the unification of the law.

Mr. Fischel wished to go still further. The notices actually prescribed were not sufficient. It was of the greatest importance for any party liable to be able to immediately take up the draft. Actually it was impossible, because he could not find it. It might happen, therefore, that three years or more would elapse before the bill came back to him, and during this space of time his guarantors might have become insolvent.

Consequently, Mr. Fischel proposed the following system:

The holder should give notice of protest to his predecessor; the latter should give notice to his predecessor and make known to him the address of the holder; the subsequent notices should contain the addresses of all the parties who had already received notice. Thus each party to whom notice had been given could immediately find the bill of exchange and take it up if he thought proper.

Mr. Vivante stated that he did not understand how, in the system of Mr. Fischel, the bill of exchange could be found. Such a policy would involve useless complications.

Mr. Fischel stated that, in practice, it was necessary to be able to immediately take up the bill. The system of reimbursement of the bill was already in use, but it would be proper to make it more easy by facilitating complete notice. It was not natural not to know those with regard to whom one had this right of reimbursement. Besides, each notice would be nearly a copy of the previous ones.

The chairman pointed out that one could telegraph to all the addresses stated on the bill, so that it might be found immediately.

Mr. Ernest-Picard set forth an objection to the amendment of Count Ehrensvar, which would lay a heavy additional burden on the holder, especially in France, where in nearly all instances maturity was fixed at the 15th or last day of the month. The delay of 48 hours would be insufficient. He proposed a subamendment by which the delay should be fixed at 4 days.

Mr. Carlin took up again the proposal of Mr. Fischel. In order that it might attain its aim, it would be necessary to impose on the holder the obligation not only of giving notice to the drawer of non-payment, but also of supplying him with a copy of the bill of exchange; it was only by this means that the drawer would have immediate knowledge of the indorsers and be able to find the document.

Mr. Fischel admitted that it would be difficult to find the bill if it bore many indorsements, but stated that actually this was impossible. If the proposal prescribing that a notice should be given to each party concerned was adopted, the finding would not require so much time, as there was only a delay of 2 days for each indorser. Under present conditions one may learn after several years that he is still responsible for a bill, if there have been lawsuits between his successors and if the indorsers are numerous. This might last 10 years; practice has shown the absolute insufficiency of the present system.

Mr. Vivante did not believe in the seriousness of the inconveniences of the present system and was not convinced of the advantages involved in the system of Mr. Fischel.

Mr. Fischel repeated that the main advantage consisted in the possibility, for each party liable, of taking up the bill almost immediately. This was very important, as the warrantors, solvent at the time of protest, might be so no longer after the long delays permitted by the present system.

Count Ehrensvar objected to the subamendment of Mr. Ernest-Picard, which, in his opinion, tended to lessen the force of the amendment.

Messrs. Hammerschlag and Wurth-Weiler supported the subamendment.

Sir Mackenzie Chalmers stated that in England the holder was bound to give notice to the drawer and to all the indorsers, and that this system worked perfectly.

The committee adopted without a vote the German proposal. Then the subamendment of Mr. Ernest-Picard was put to a vote.

It was adopted by eight votes to six, there being one abstention.

Ayes (8): Argentina, Austria, Hungary, France, Italy, Luxemburg, Switzerland, Turkey.

Nays (6): Germany, Belgium, Denmark, Great Britain, the Netherlands, Sweden.

Russia abstained from voting.

The delegate of Brazil was absent.

Then the amendment of Count Ehrensvard was carried by 12 votes to 3 abstentions (Belgium, Great Britain, and Russia). The delegate of Brazil was absent.

The proposal made by Mr. Fischel was then put to a vote. It obtained 7 votes, and there were 8 abstentions.

Ayes (7): Germany, Argentina, Austria, Hungary, Denmark, Luxemburg, Sweden.

Abstentions (8): Belgium, France, Great Britain, Italy, the Netherlands, Russia, Switzerland, Turkey.

The delegate of Brazil was absent.

On the suggestion of the chairman, the committee decided that the question should be put to a vote at the next sitting.

The sitting was terminated at 12.45 p. m.

#### EIGHTH SESSION, JULY 13, 1910.

Chairman, Mr. Asser.

The sitting was opened at 9.30 a. m.

The order of business called for the continuation of discussion on the proposal made by Mr. Fischel concerning notice of nonpayment of the bill at maturity, a proposition on which, owing to numerous abstentions, a majority had not been obtained at the preceding sitting.

Mr. Wurth-Weiler supported the proposal of Mr. Fischel concerning notice to the indorsers in case of nonpayment of the bill of exchange. He pointed out that each indorser had a great interest in being placed as soon as possible in a situation to take up the bill and to exercise recourse against his warrantors. In order to put his hand on the unpaid bill it was necessary to know the names of the subsequent indorsers.

A mere notice, such as was to-day provided by several laws, did not give sufficient information on this point. The indorser only got back the bill at the time when recourse was exercised against him. As, between the date of nonpayment and the exercise of recourse against the indorser, a long space of time might elapse, the indorser might find his rights seriously harmed. His warrantors might, for example, become insolvent.

The system advocated by Mr. Fischel seemed to obviate this inconvenience, which was a serious one. According to this system, each indorser, in giving notice to his predecessor, would also give a copy of the notice served on him by his own successor. In this way each indorser would know the names of the subsequent indorsers and could simultaneously apply to them in order to offer to them the reimbursement of the bill, take it back, and exercise immediately recourse against his warrantors.

Mr. Vivante pointed out that the system of Mr. Fischel would not afford entirely satisfactory results. It left the parties concerned uninformed about the names of the guarantors, of the acceptor, and of the payers for honor. Such being the case, he inquired if it would not be preferable to oblige the holder to join to the notice he had to serve on the drawer—in accordance with the preceding conclusion of the committee—a copy of the bill itself?

Mr. Fischel replied that if his system was not faultless, nevertheless it made the reimbursement of the bill easier, and, in any case, made it possible to recover it. Notice, as it actually existed, did not give the means of ascertaining where the bill was, so that it seemed to be of doubtful utility.

Mr. Carlin stated that, in accordance with what he had said the day before, he could only support the proposal of Mr. Vivante from a theoretical standpoint; but he made reservations with regard to the difficulties which it might involve in practice.

Mr. Fischel said that, according to the proposal of Mr. Vivante, a copy of the bill would be given to the drawer, but in this case the interests of the indorsers would be sacrificed. In order to avoid this, it would be necessary to prescribe that the copy of the notice should always be given by each indorser to his predecessor.

Mr. Nagy joined in his proposal of Mr. Fischel, because it afforded opportunities to discover the actual holder of the bill.

Mr. Beernaert was of the opinion that the proposal of Mr. Vivante would give rise in practice to great complications; so that he was unable to accept it.

The chairman, before putting to a vote these two proposals, pointed out that, in order that one of them might be inserted to some purpose in the uniform law, it should secure a great majority. Indeed, both were innovations, and the uniform law should contain, as a matter of principle, the fewest possible of such provisions and only those whose utility was unanimously recognized.

The committee adopted the proposal of Mr. Fischel by 11 votes against 2 (France and Italy)—three countries (Argentina, Great Britain, and Russia) abstaining from voting.

Mr. Vivante withdrew his proposal.

On the request of Mr. Hammerschlag, the committee resumed the discussion of paragraph 1 of question 17 (*d*):

Should it be admitted that, except for a contrary stipulation in the bill of exchange, payment may be made in money or bank-notes having legal circulation in the place of payment?

Mr. Hammerschlag renewed his proposal that the uniform law should not concern itself with this question. As Mr. Beernaert had already explained in a plenary sitting, it was proper to leave to the financial legislation of each country the right to regulate this question.

The chairman supported this proposal, which was adopted by the committee.

Question 19 was taken up again, in regard to which Mr. Nagy had made a proposal concerning notice of nonpayment given by public functionaries.

Mr. Lyon-Caen explained that in France, the notices that were in question were made by the public functionaries who had drawn up the protest. A new law has been promulgated on this subject, and it would be difficult to propose its modification. The uniform law, therefore, should reserve to the laws of each country the power to authorize public functionaries to give notice to the drawer.

Mr. Simons did not think that such a reservation was indispensable in the uniform law, because national law would always be able to lay this obligation on public functionaries. Moreover, he thought



that the position of the holder would be impaired by such a reservation.

Mr. Beernaert said that each country had established regulations which it would be difficult to modify; for instance, the system of collection through the post office, of which he was minister, he had succeeded in securing the adoption in Belgium and which, for 30 years, had worked in a way that gave satisfaction to everybody. It was important, therefore, to leave to national legislation the regulation of this question.

Mr. Nagy presented the following proposal:

The uniform law should lay on the holder the obligation to give notice, but such notice may be given by a public functionary if authorized by the national law.

This proposal was unanimously adopted, with the exception of two abstentions (Great Britain and Russia).

The committee then examined the penalties to be provided if such notice was not given. It was unanimously decided that in such a case the holder should not be considered as guilty of negligence, but should be merely liable to an action for damages. At the request of Mr. Beernaert, it was agreed that the national laws should regulate the question of the liability incurred on this subject by public functionaries and Governments.

The chairman submitted for discussion question 20:

What is the object of recourse?

Mr. Lyon-Caen thought that the question had been disposed of at the time when recourse in case of refusal to accept had been dealt with, and that consequently it should not be discussed again. The "rapporteurs" would apply to this subject the principles which had been adopted with regard to recourse in case of refusal to accept.

The chairman pointed out that in the answer given by Section I there was a reference to interest on the costs and expenses running from the day of the beginning of proceedings. It did not seem to him necessary to deal with this question, which might be resolved by a mere application of the common law concerning interest.

This suggestion met with general assent.

New question: Should the law deal with the redraft?

Sir Mackenzie Chalmers insisted that it should be dealt with.

Mr. Lyon-Caen replied that it was important to avoid complications in the uniform law, and that, consequently, it would be convenient not to refer to this matter.

Mr. Hammerschlag said his opinion was that it would be proper to provide for the redraft, as national laws, as those of France and Austria, did make reference to it. If the uniform law omitted it, would not this involve an implicit abrogation?

Mr. Carlin said that Section I had considered that it would be convenient not to deal with it, because it was little resorted to, but at all events the uniform law should not prohibit it.

Mr. Simons read article 57 of the German project concerning this subject.

Mr. Wurth-Weiler stated that Section IV recommended the adoption in the uniform law of the provisions set forth in the German draft.

The chairman said that the committee found itself in the presence of two systems, viz, that of Section I and that of the German draft. He inquired if Section I could not support the German project.

Mr. Lyon-Caen said he had no authority to decide on behalf of the sections, but personally he thought that the admission of the system proposed by Germany would involve a useless complication in the law.

Mr. van Gelderen joined in the opinion of Mr. Lyon-Caen. He thought that the law should be simple. National legislation should regulate such details.

Mr. Fischel pointed out that in order to exercise recourse against a party who was abroad there was often no other means to be found in business, if one did not have a direct correspondent, than to draw on him a redraft. The question, therefore, was one of those which from an international standpoint presented great interest, especially with regard to the question of exchange.

The chairman inquired if the law should regulate redraft.

The committee answered affirmatively by 12 votes to 1 (Argentina); 3 countries (France, Great Britain, and Switzerland) abstaining from voting.

The German proposal was then adopted.

Question 21. Is the holder who wishes to exercise recourse compelled to observe the order in which the different individual obligees jointly liable have signed the bill of exchange, commencing with the last indorser, etc.?

The committee adopted the answer made by Section I, which was negative. The holder might sue either all the signers jointly, or any of them separately, or the drawer. Recourse exercised against one of the signers unsuccessfully should not prevent proceedings against other signers, even later ones.

Question 22 (a) and (b). What are the rules to be established with reference to defaults: (a) In regard to the drawer? (b) In regard to indorsers?

The chairman, after having read the answers given by the sections, proposed the adoption of that of Section IV.

Mr. Simons thought that it would be dangerous to lay down in the law a general rule; the distinction concerning the character of recourse pertained to the civil law.

Mr. Lyon-Caen stated that it was necessary to agree, first, upon the subject-matter; then should come the question of form. The situation of the holder who had not made protest in due time should be determined. At what time should he be held guilty of negligence? Mr. Lyon-Caen considered that the holder was guilty of negligence in the following cases:

When protest had not been drawn up at all, or had not been drawn up within the legal delay; when a bill of exchange payable at sight or at a certain time after sight had not been presented within six months from its issue; and, finally, when a bill of exchange stipulated as "not subject to acceptance" had not been presented in due time.

The effects of negligence in all such cases being almost the same, there was no objection to laying down a general rule.

Mr. Simons requested that when the enumeration given by Mr. Lyon-Caen was taken up again a detailed definition should be given of what was meant by the term "holder guilty of negligence."

The committee agreed to this suggestion, and paragraph 1 of the answer made by Section I was adopted.

The chairman submitted for discussion paragraph 2 of the said answer, expressed as follows: "The drawer may, however, be sued for the amount of his inequitable gain."

Mr. Carlin stated that some countries had provided such an action in their laws on bills of exchange. Was it not to be feared that if this question was passed over in the uniform law it might be supposed that the framers of the law had intended to discard it?

Mr. Simons was also of the opinion that it would be better to make in the uniform law no statement with regard to this action, in order to avoid conflicts of laws. A mere mention in the report would tend to remove all doubt respecting the intentions of the committee on this point. Such a mention would obviate the inconveniences pointed out by Mr. Carlin.

Mr. Carlin drew the attention of the committee to the following resolutions adopted by Section I:

If a bill is domiciled, the holder shall have the protest drawn up at the domicile so stated, but default of such a protest shall not cause the holder to lose his rights against the acceptor.

The holder, whether he has or has not had a protest drawn up at the stated domicile, shall give notice of nonpayment to the acceptor within the same time and in the same manner as to the last indorser.

Mr. Simons stated that Section II had not expressly declared itself on this question; but he thought that by supporting the proposal made by Section I he ranged himself with the opinion of the majority of the former section.

Mr. Nagy said that the proposal in question was in harmony with a provision of the new German law of 1908, a provision which had also been adopted in Hungary; but, in his opinion, the question had already been decided as a matter of principle by the committee, and at present the only matter in question was the notice to be given by the holder to the acceptor.

The committee unanimously agreed to the proposal made by Section I.

Section I had also proposed the following new question:

Where should protest be drawn up when the bill of exchange is payable in the place of domicile of the drawee but at the domicile of another person (*Zahlstellenwechsel*)?

The response given by the section was that protest should be drawn up against the drawee at the domicile of such other person.

The committee adopted this solution without discussion.

Chapter X, concerning the loss of a bill of exchange, was then taken up.

Questions 23 and 24. Is it sufficient for the law to contain provisions for the purpose of granting to the loser of a bill of exchange (accepted or nonaccepted) the right to demand a duplicate, or, rather, should the process of amortization (*Amortisations-Verfahren*) be established?

Mr. Nagy thought it would be very difficult to come to an agreement on this subject. Two systems presented themselves—the French and the German—both of which had their advantages. The French system gave to the holder the possibility of getting back his money without delay, but the German system afforded more security and led to a definitive result. The best solution would consist in combining the two systems, but such a combination would give rise in some

countries to serious trouble; hence it would be preferable to leave the subject to national legislation.

The chairman stated that, as a rule, the sections were inclined to adopt the process of cancellation (amortization), but several States having declared that they were not in a situation to introduce such a process, it would be better on this subject to give entire liberty to the national laws.

The chairman replied to a question put by Mr. Simons that questions 23 and 24 were not to be understood in the sense that the different rights of the holder there set forth were mutually exclusive.

Mr. Simons pointed out that Section I did not admit the right to claim a duplicate unless a bill not yet accepted was in question. This did not seem to him to be fair.

The chairman stated that according to the law of the Netherlands the purchaser only of a bill of exchange had the right to demand several drafts. Later holders did not have this right, even if they had lost the document.

The committee adopted the answer of Section I after having stricken out the words "not accepted," so that the resolution carried by the committee was as follows:

The party who has lost a bill may always require the delivery to him of another draft from the drawer, by following back the chain of indorsements, according to the regulations already established.

The law shall leave to the legislation of the country of payment the regulation of the process to be used by the holder who has lost a bill in order to obtain payment of it.

Section I had added to this answer a sentence stating that it would be desirable that the judgments rendered in this matter in one country should be effective in all contracting States.

The committee remitted the examination of this question to the committee on international private law.

Section I had proposed the following new question:

Should the law specify the obligations laid on the drawee in order to legally discharge him at maturity?

And had answered it as follows:

Yes. The drawee shall be legally discharged only when he has verified the identity of the holder and the regularity of the chain of indorsements. He shall not, however, be bound to verify the signatures of the indorsers.

Mr. Simons objected to this answer that it would be dangerous to impose on the drawee a full investigation of the identity of the holder. Such a rigid obligation should be restricted by adding in the answer made by Section I the words "as far as possible" to the words "only when he has verified."

The chairman suggested that the question should be postponed and discussed only at the end of the Questionnaire.

The suggestion met with general assent.

Question 25. In case there is no amortization, what should be the position of the holder of the bill of exchange who proves his ownership by a series of indorsements descending to himself?

The committee unanimously adopted the answer made by Section I, which was as follows:

In case of loss the bill of exchange shall not be claimed back except against the holder who has acquired it in bad faith, or who, in acquiring it, has been guilty of gross negligence.

The committee proceeded to Chapter XI:

Defects of form; substitutions.

Question 26. What provisions should the law contain with reference to omissions and other defects of form?

The six subdivisions laid down by Section I were taken as bases.

1. Omission of designation as a bill of exchange, or of the clause "to order."

This question was remitted to the committee on international private law.

2. Omission of the date of maturity.

The answer of Section I, according to which, in such a case, the bill should be considered as payable at sight, was adopted.

3. Omission of the place of payment.

Mr. Carlin referred to the answer of Section I, which treated a bill which did not indicate the place of payment as payable at the domicile of the drawee, even if such a domicile was not indicated in the bill. He quoted the case in which the bill was drawn on a well-known bank which had no branch office. In such a case the place of payment was quite certain, and the fact that it had not been expressly stated should not impair the validity of the bill.

Mr. Simons having objected that the domicile might change during the circulation of the bill, Mr. Carlin replied that, in order to avoid such a difficulty, it would be sufficient to add to the words, "at the domicile of the drawee," the words, "at the time of issue."

Sir Mackenzie Chalmers declared that, according to the English law, it was sufficient that the place of payment could be determined, and that an express statement was not required.

Mr. Vivante said that, in his opinion, the indication of the domicile of the drawee, placed either close to the name of the drawee or in the statement itself of this name, was sufficient. But, if such was not the case, the bill of exchange should be considered as null. Mr. Vivante requested that his proposal should be put to a vote.

With the assent of the committee, the chairman gave the floor to the minister of Spain, one of the honorary presidents of the conference, who wished to make a few remarks about the question under discussion.

Mr. de la Rica y Calvo stated that in Spain a bill of exchange which did not expressly indicate the place of payment was considered as invalid. In Spain, the identification of the drawee without such an indication would often be impossible, as many persons bore the same name.

Mr. Carlin supported the proposal of Mr. Vivante, which he formulated as follows:

In case of omission of the place of payment, the bill shall be payable at the domicile of the drawee, even though this domicile is not indicated in the bill, provided that it can be determined from the text of the bill. Otherwise, the bill shall be null.

This proposal was carried.

4. Omission of the place of issue.

The committee decided that, in such a case, the bill should be considered as issued at the domicile of the drawer.

5. Omission of the name of the payee.



Mr. Simons objected to this proposal. If the drawer had not indicated a payee, it was not a bill of exchange to bearer that was in question, but a bill of exchange in blank. Moreover, the contrary opinion would have the result, in the countries which did not admit the bill of exchange to bearer, that all the bills which did not contain the name of the payee would be null.

Mr. Lyon-Caen replied that a true bill in blank could not be in question, because the text of such a bill would be differently expressed. He would consent, however, to consider the bills of exchange in question as bills of exchange in blank, and not as bills to bearer. The consequences would be about the same in both cases.

The committee, concurring in these views, decided that bills of exchange in which the name of the payee was omitted, should be considered as bills of exchange in blank.

6. Omission of the date of issue, of the name of the drawee, of the signature of the drawer.

Section I had proposed not to make such omissions causes of nullity.

On an observation made by the Norwegian delegation, the following question was proposed—whether in the absence of the date of issue, the bill should be valid as a bill of exchange, provided that the date could be determined by some other means.

Mr. Simons responded to this question in the negative. He read the report of Section II, which, for the following reasons, considered that the indication of the date of issue was necessary:

- (a) In order to ascertain if the stamp laws had been complied with;
- (b) In order to establish if, at the moment of issue, the drawer was capable of binding himself by a bill of exchange;
- (c) In order to establish on what day a bill at sight or at a certain time after sight should be presented.

The committee adopted the proposition of Section II, which considered as void bills of exchange which did not contain the date of issue, the name of the drawee, or the signature of the drawer.

Mr. Lyon-Caen summed up the discussion in order to ascertain clearly the opinion of the committee. It had been admitted, as a matter of principle, that a bill of exchange was invalid if one of the essential particulars was lacking. However, this principle was to some extent modified by the resolutions which the committee had taken with regard to the six cases enumerated by Section I.

This statement met with general assent.

Mr. Simons drew attention to the principle laid down by the committee, viz, that the indorser could not change the character given to the bill of exchange by the drawer, and that, consequently, he had not the right by an indorsement to convert a bill of exchange to bearer into a bill of exchange to order. But, if nevertheless the holder did endorse it, what would be the consequences?

The German law on the cheque provided that an indorsement placed on a cheque had the effects of a guarantee. Did the committee wish to adopt such a solution with regard to the bill of exchange to bearer, although it had required a special statement (the word "guarantee," or equivalent words) with regard to guarantee?

The committee answered unanimously in the affirmative.

Mr. Lyon-Caen stated once more that an indorsement to bearer should be considered as invalid.

Question 27. Is it necessary to regulate the effect of substitutions, even if the condition of remittance from one place to another is suppressed?

The committee answered without discussion in the negative.

Mr. Nagy, with regard to question 28a, inquired if it was settled that each signature should be considered as independent of all others.

The chairman answered this question affirmatively. He proposed to adopt the answer given by Section I.

This proposal was agreed to.

With regard to question 28b, the chairman inquired if the uniform law should concern itself with the consequences of a material alteration.

Mr. Nagy suggested, with respect to this, to adopt a provision in accordance with paragraph 1 of article 16 of the Hungarian project.

This proposal was unanimously agreed to.

The chairman then submitted for discussion the question whether or not a presumption should be established with regard to the signatures which figured on an altered bill.

Mr. Nagy, in accordance with paragraph 3 of article 16 of the Hungarian project, proposed to adopt the presumption by which the signatures should be considered as placed on the bill before its alteration.

Mr. Carlin thought that the law should establish a presumption. It might be open to discussion whether such a presumption should be that which was proposed by the Hungarian delegation, or the presumption to the contrary, advocated by the delegations of Bulgaria and Switzerland, according to which the signature should be considered as given after alteration. The latter presumption was justified in the interest of avoiding, as far as possible, all discussion on the bill of exchange as it presented itself. However, provided that a presumption should be admitted, he was inclined to support a system different from his own, especially the system of Mr. Nagy.

Mr. Simons said he would prefer that the law should not contain a presumption, the question of proof being within the scope of the national laws. However, if the committee decided to establish a presumption, he would support the proposal of Mr. Nagy.

Mr. Beernaert objected to any legal presumption.

The chairman put to a vote the question whether the uniform law should lay down the principle of a legal presumption.

By 14 votes to 2 (Hungary and Switzerland), the committee decided that the law should not establish a presumption.

Mr. Lyon-Caen requested that the questions pertaining to vis major and the moratorium should be postponed till the next sitting. He suggested that the discussion of the subsequent questions should be immediately taken up. (General assent.)

Questions 30 and 31.

Mr. Lyon-Caen recalled that some countries, as France, established, without regard to the position of the parties liable, a uniform time limitation for the actions arising from the bill of exchange. Notwithstanding this, the French delegation, considering that it was equitable that the acceptor, the principal obligee on the bill, should be bound during a longer time than the other parties liable, would

accept time limits differing according to whether the action was to be taken against the acceptor or against the other parties liable.

The chairman stated the general agreement of the sections to this solution.

Mr. Nagy pointed out that, in his section, Hungary had proposed a uniform time limitation because the difference between the acceptor and the other parties liable was essentially theoretical. The drawer, the author of the bill, should be bound as long as the acceptor.

The chairman recalled that the sections had proposed a time limit of three years for actions against the acceptor, and of six months for actions of the holder against the indorsers.

Mr. Fischel requested that there should be added to the first two paragraphs of the answers of Section I that the time should run from maturity, or, if there was a protest, from either the day on which protest had been drawn up or the day on which summons had been served on the debtor. (General assent.)

Mr. Simons made some reservations with regard to paragraph 4 of the answer of Section I. In order to avoid the inconveniences arising from the fact that, in certain cases, because of the delay of prescription applying to actions against the acceptor, some of the parties liable might see their action against the principal party liable lost by prescription before they were able to exercise it, Section I had proposed to increase in certain cases the limit of three years to an indeterminate extent. This innovation might seem dangerous. Section II had been also influenced by this difficulty, and had solved it in a different fashion. Mr. Vivante had, indeed, proposed to place the indorsers in a situation to set up their rights in due time by obliging the indorser against whom an action was brought to give notice to his predecessor, who should in his turn give notice to the previous indorser, and so on up to the drawer.

Mr. Vivante explained his proposal. It might happen that the drawee was not in a situation to exercise in due time recourse against the acceptor, if the delay of prescription was fixed at three years; for example, if 10 indorsers had to be successively sued. The delay of prescription applying to each of them was six months. The last indorser would thus be able to address himself to the drawer five years after the day on which the first one had been sued; that is to say, two years after his action against the drawee had been extinguished, such an action being subject to a prescription of three years. On the contrary, if he was advised of the action brought against one of the warrantors of the bill, he would be able in due time to take the measures necessary to preserve his rights against the acceptor.

The chairman observed that the drawer was always able to interrupt the prescription.

Mr. Lyon-Caen said that it would be necessary to answer a preliminary question, viz, Would the interruption of prescription against one of the signers of the bill be valid against all of them?

The chairman thought that by answering affirmatively this question one would seriously derogate from common-law principles, which did not seem advisable.

Mr. Nagy thought also that prescription should be interrupted only with regard to the party on whom summons had been served. It was in this sense that Article 88 of the Hungarian draft was drawn.

Mr. Simons said that the solution set forth by the Hungarian draft merely set aside the question without solving it. The proposal of Mr. Vivante was much more definite. It was equivalent to changing into an obligation the power of the indorsers to give notice to their predecessors of the summons to pay served on them. Thus, having been given notice, the parties concerned were in a situation to interrupt prescription with regard to the acceptor.

Mr. Carlin did not object to the system of Mr. Vivante, but inquired what would be the penalty in case the formality provided for should not be carried out.

Mr. Vivante replied that a suit for damages might be brought against the person who had not given the notice.

The chairman pointed out that the expenses involved in such a process would be very slight. On the other hand, the proposal of Mr. Vivante had the double advantage that the drawer remained acquainted with the case, and the parties concerned were given the power to become parties to the suit. He proposed to adopt the three first paragraphs of the answer of Section I, and to add to them, at the suggestion of Mr. Vivante, the obligation for the indorsers to give notice by registered letter to their own predecessors of the suit brought against them.

This proposal was adopted by 13 votes to 2 (Austria and Hungary) and 1 abstention (Great Britain).

Mr. Fischel thought proper to draw the attention of the committee to the question of the delay of prescription with regard to guarantors. In regard to the guarantor of an indorsement, it was clear that the delay of prescription ought necessarily to be the same as for the indorsements in general. But, in regard to guaranty given for the acceptor, it would be proper for the committee to decide whether such a guarantee was to be considered as security for the payment of the bill of exchange, and thus subject to a time limitation of six months (as an indorsement), or that the guarantor was bound for the same time as the acceptor—for three years.

The committee decided that in case of guaranty given for an acceptor, the time limitation should be three years.

With regard to paragraph 5 of the answer of Section I, Mr. de Menezes requested that it should be settled that the causes of interruption should be regulated by national legislation.

The chairman replied that such questions of procedure belonged to the committee on international private law.

Mr. Simons thought that there was interest in attaining uniformity on this question. It was for this reason that Section II had proposed, in accordance with the German law of 1888, an enumeration of the causes of interruption of prescription.

Mr. Vivante said he could not concur in such an opinion.

The chairman inquired if the uniform law ought to regulate such a question. He suggested the adoption of the proposal set forth by Section I, remitting it to the committee on international private law to examine whether or not the national laws should determine the causes of interruption of prescription.

This proposal was adopted.

Concerning the effects of prescription, the solution adopted by Section I was carried.

Mr. Carlin drew the attention of the committee to a new question set forth by the same section:

Should the law specify the obligations laid on the drawee in order that he should be validly discharged at maturity?

The section had answered this question in the affirmative. However, the French delegation had considered that such minuteness was useless, as the drawee was presumed to be discharged by the payment.

Mr. Vivante pointed out the danger involved by such a presumption. If a married woman, as such incapable of giving alone a valid receipt, received the amount of a bill, should such a payment be valid?

Mr. Lyon-Caen set forth the idea of the French delegation. There was a presumption of discharge in case of payment, but if the holder had been guilty of any negligence—if he was aware, for example, that the woman to whom he had paid was incapable of receiving a payment—the presumption would be destroyed. It was necessary to leave a wide latitude to the courts with regard to the appreciation of such circumstances.

The chairman proposed to postpone this question for further examination. (General assent.)

Mr. de Menezes proposed to introduce into the uniform law a provision stating that whoever signed a declaration pertaining to the bill of exchange, either as an agent or as a legal representative of another person, without being duly authorized to do so, should be bound personally by such an act under the law of exchange. (General assent.)

Questions 33, 34, and 35.

Mr. Vivante thought that the uniform law should deal in the same articles with the questions concerning both the bill of exchange and the promissory note to order.

The chairman said his opinion was to the contrary, while Mr. Schneider concurred in the views of Mr. Vivante.

Mr. Nagy made known that in Hungary it had been attempted to connect the two questions, as proposed by Mr. Vivante, but it had to be given up owing to the practical difficulties encountered.

The proposal of Mr. Vivante was rejected by 10 votes to 4 (Brazil, Italy, Russia, and Turkey). Germany and Argentina abstained from voting.

Mr. Simons requested that the law should prohibit the bill to bearer.

Mr. Carlin pointed out that the prohibition of the issue of such a bill belonged to national laws.

The committee adopted the answer made by Section I to the questions concerning the promissory note to order.

The recommendations of Section I with regard to fiscal prescriptions were referred to the committee on international private law.

The sitting was terminated at 12.30 p. m.



NINTH SESSION, JULY 14, 1910.

Chairman, Mr. Asser.

The sitting was opened at 9.30 a. m.

The chairman stated that he thought he should express the feelings of all the members of the committee in presenting to the French delegation their cordial felicitations on the occasion of the French national holiday. He was anxious to make known to this delegation, in the name of the committee, the sincere good will which they entertained for the welfare and prosperity of France. [Loud applause.]

Mr. Lyon-Caen, on behalf of the French delegation, thanked Mr. Asser heartily for his kind thought and the warm expression he had given to it. The French delegation had been keenly touched by it, as also by the sympathetic reception which the whole committee had given to the declaration of its chairman. Mr. Lyon-Caen expressed to all the members his gratitude.

The chairman read the letter by which Mr. Nagy gave notice that he would not be able to assist further in the labors of the conference. The chairman welcomed the arrival of Mr. Sichermann, who took his place among the members of the committee.

Mr. Lyon-Caen, in the name of the two "rapporteurs" of the committee, requested the committee to clear up some points on which the "rapporteurs" felt some doubt.

They thought they understood that the committee held the opinion that the uniform law should merely deal with the bill of exchange and the promissory note to order, without reference to the bill to bearer. Was such an interpretation of the decisions reached the correct one?

Mr. de Menezes thought that a misunderstanding had arisen on this subject owing to the French expression "billet à ordre." This appellation seemed to exclude the idea that such a document could be made to bearer. However, it might happen that such a document of exchange, which was designated by other names in other countries, could be issued to bearer. It was well understood that the committee had not intended to allow such a document to be issued to bearer. Nevertheless, it was not to be mistaken for the "bill to bearer," with which the law of exchange had by no means concerned itself. Thus it was important to make this point clear in the report.

The interpretation given by Mr. Lyon-Caen was approved.

Mr. Lyon-Caen said he also wished that the committee would declare itself clearly on the effects of the clause "return without costs." There was a general agreement in recognizing that when such a stipulation was inserted the holder could not have a protest drawn. But did such a clause tend to exempt the holder:

(1) From presenting the bill for payment within the time fixed by the law?

(2) From giving notice of nonpayment of the bill to the parties concerned?

The committee answered question 1 in the negative.

Mr. Lyon-Caen inquired what would be the penalty incurred by the holder who should have neglected to present in due time a bill containing the clause, "return without costs." He thought that the

holder should not be considered as guilty of negligence, but should be merely liable to a suit for damages.

Mr. Simons thought, on the contrary, that the clause "return without costs" should be without effect with regard to the penalties applicable to the holder who had not presented the bill to the drawee in due time. These penalties should be the same as if the clause did not exist.

Mr. Vivante said that on this matter he shared the opinion of the German delegation.

Mr. Carlin considered that, in fact, it was not possible to admit that such a clause should involve effects that were so important.

The chairman submitted then for discussion the following question:

Should the penalties enforced against the holder who has not presented the bill to the drawee within the legal time be the same, whether the bill does or does not contain the clause, "return without costs?"

The committee was unanimous in the affirmative, with the exception of the delegation of France.

Mr. Ernest-Picard thought that the clause, "return without costs," should exempt the holder from giving notice of nonpayment by registered letter. Such a clause was, in fact, inserted mostly on bills of which the amount was not very important—5 or 10 francs. If the holder was bound to give notice of nonpayment by registered letter this would impose on such bills which are at present exempt from all expenses new costs which would sometimes rise to 5 per cent or 10 per cent of the amount of the debts. This was not admissible.

Mr. Fischel thought that it would also be proper to give consideration to the drafts of which the amount was important and which were stipulated "without costs." It was perhaps for these that notice was the most necessary. Such bills, when not paid, were those which the parties concerned wished most quickly to take back, and it was necessary that they should be given notice of nonpayment.

With the exception of two votes (cast by France and Belgium), the committee was unanimous in deciding that the clause in question should not exempt the holder from giving notice of nonpayment of the bill to his warrantors.

Mr. Carlin drew the attention of the committee to article 761 of the federal code of obligations, which regulated the effects of a prolongation of maturity granted by the acceptor to the holder. Mr. Carlin inquired if it would not be proper to introduce a similar provision in the uniform law.

This proposal, supported by Mr. Simons, was adopted, with reservations concerning its form.

The committee took up then the examination of the three questions which had been reserved.

New question (added in report of Section I, after question 24). Should the law specify the obligations imposed on the drawee in order that he might be legally discharged by payment at maturity?

Mr. Lyon-Caen proposed to decide that the drawee should be discharged by payment at maturity unless negligence could be set up against him.

Mr. Simons preferred that it should be specified that gross negligence was necessary in order that the drawee should not be discharged.

Mr. Beernaert thought that it would be suitable to leave to the courts entire liberty of interpretation.

Mr. Simons insisted on this point—that if the law led to the belief that a slight negligence sufficed to destroy the presumption of discharge, the drawee would be thus permitted to delay payment under flimsy pretenses of verification.

Mr. Vivante thought that by specifying “gross negligence,” one would meet the difficulties arising from the divergences which existed on this point between the various laws.

Sir Mackenzie Chalmers pointed out that, according to the Anglo-American law, forged indorsements were considered as null. So the series of indorsements was interrupted, and the drawee who paid when one of the indorsements was forged was not discharged.

Mr. Carlin thought that the committee might agree on the text proposed by the majority of Section I, thus:

The holder shall not be validly discharged unless he had verified, as far as possible, the identity of the holder and the regularity of the series of indorsements. He shall not be bound to verify the signatures of the indorsers.

This proposal was carried.

Question 13. Should the law accord special rights to the holder of a bill of exchange in case of failure of the acceptor?

Mr. Lyon-Caen recalled that the committee had adopted, on this subject, paragraph 1 of the answer of Section I, concerning the case of the failure of the acceptor. In such a case, the holder was entitled to exercise recourse.

But it had been thought that there were events which should be assimilated to failure. Section I proposed to leave the determination of such events to national legislation. The committee had preferred that the uniform law should make this point more clear. Hence the “rapporteur” proposed the following text:

In case of failure of the acceptor, and in all other cases in which an event may have occurred by which he is deprived of the benefit of the legal term, the holder shall be able to take recourse against his warrantors, provided that he shall have made a protest.

The chairman said he was aware of the interest involved by the assimilation to failure of certain special circumstances applying to nontraders who had accepted a bill of exchange. The holder should in such a case be entitled to exercise recourse. But the chairman thought it dangerous to introduce into the uniform law an element so vague and indeterminate as were the events to which Mr. Lyon-Caen had referred. No doubt the court should examine such cases, but then what would be the consequence of the proposal? The holder, anxious to exercise his recourse, might address himself to the court to have the event established, but the judgment might be rendered after the expiration of the delays granted for actions arising under the bill of exchange. Would this be an advantage to the holder?

The German delegation had made known that it considered this question essential. Therefore, for the sake of conciliation, the chairman would admit that the insolvency of the acceptor should—for the same reasons as his failure—open the way for recourse of the

holder, but it would be desirable to limit the provision to insolvency duly established, and it should belong to the national laws to determine how such insolvency should be established.

Mr. Simons thought that it was especially in the cases where insolvency had not been legally established that the German proposal would have advantages. In practice, recourse of such a character was seldom exercised at the present time in Germany. The mere fact that such a recourse was possible was sufficient to induce the warrantors to reimburse the bill to the holder when the acceptor was in fact insolvent. If the provision which existed on this subject in the German law should be suppressed, the indorser, before he took back the bill, would wait till the failure was declared, and the holder would have an interest in provoking it.

Mr. Fischel brought out how this provision of the German law was of a character to prevent failures. A drawee was embarrassed and had suspended his payments; the holder merely surrendered the bill to his indorser, and, in practice, this indorser would never refuse to take it back, because he knew that in case of refusal the holder would exercise recourse against him. If such a provision was suppressed, the holder would have no other means of exercising recourse than to bring on failure. This was just what it was desirable to avoid.

When a debtor was officially declared to have failed, the dividend was nearly always lessened by the costs which the judicial proceedings involved. Often the interests of the creditors and also those of the debtor could be protected through a private winding up and an amicable agreement. As this question especially interested tradesmen, Germany would be compelled to show herself uncompromising in regard to it.

Another reason militated in favor of the German proposal. When the debtor possessed nothing, it was not permitted in Germany to declare a failure. However, in such a case, the holder should be in a situation to exercise his recourse. It seemed to Mr. Fischel necessary that the law should expressly set forth suspension of payment as a ground for recourse.

The chairman stated that the serious advantages pointed out by Mr. Fischel were perhaps not exclusively due to the provision of the German law which was in question. Such advantages were in effect obtained in countries where the said provisions did not exist, in the cases which occurred frequently, where it was not the interest of the creditor to provoke the failure of the debtor. The chairman recognized, however, the justice of the observation of Mr. Fischel with regard to the acceptor without recourse, but whose failure could not be established because of this fact. Such a case should be specially provided for by the law.

Mr. Fischel replied that, in effect, commercial practices had supplemented the deficiencies of national laws, and that thus, in countries which did not know the German provision, things went on as they did under this provision. But the framing of an uniform law was in question. If such a law did not expressly sanction these practices, would it not be concluded that it intended to abolish them? It was important that the law should conform to commercial practice.

Mr. Hammerschlag supported the argument presented by Mr. Fischel.

Mr. Carlin stated that the Federal Code of Obligations (article 748) reproduced, with additional details, the German law.

Mr. Sichermann stated that the Hungarian draft admitted a similar provision.

Mr. Vivante said he could not support the form suggested by Mr. Lyon-Caen. There was in Italy a law on compositions which granted to embarrassed tradesmen a delay for payment. Recourse should be authorized even though the acceptor had obtained a composition, and though he had obtained the benefit of a delay.

Mr. Simons proposed to add the following paragraph:

The national laws shall designate the cases of suspension of payment, of embarrassment, and other cases legally established which may for this purpose be assimilated to failure.

Count Ehrensvard inquired what was meant by "embarrassment" (*déconfiture*), which did not seem to exist in the Swedish law.

Mr. Fischel replied that it concerned suspension of payment by a nontrader. This explanation should be given in the report.

The proposal of Mr. Simons was unanimously adopted, the Netherlands abstaining from voting.

It was settled that, in order that recourse might be exercised, a protest should be drawn up, unless the draft stipulated "without costs."

Question 3, of "vis major."

The chairman read the answer given to this question by Section I.

Mr. Carlin proposed to adopt the distinction made by the section between personal and general cases of vis major, and asked that the committee should first decide on the effects of the former.

Mr. Hammerschlag requested that personal cases of vis major should be entirely disregarded. Concerning the general cases of vis major, the central committee, before proceeding with the discussion, should decide whether the uniform law should merely concern itself with those which were of a physical origin, and with the laws of moratorium grounded on such cases, or should also regulate the consequences involved by the laws of moratorium enacted for political or financial reasons. The latter should be considered from a quite different standpoint, and the report of Section IV had proposed special amendments concerning such laws of moratorium of a political or financial origin, which it designated as laws of moratorium "enacted for the whole of a country." Contrary to his previous opinion, Mr. Hammerschlag had come to the conclusion that it would be better to disregard the laws of moratorium of an origin either political or financial, owing to the nearly insuperable difficulties of finding a solution of a nature satisfactory to all concerned.

Mr. Fischel supported this proposal.

Mr. Lyon-Caen set forth another proposal, which was more radical. He asked the committee to ignore all questions pertaining to the moratorium. Such questions had a political character, and were especially delicate. They could not be regulated without long reflection. Hence, it would be better to set them aside unconditionally at the present time.

This proposal was supported by Mr. Simons and objected to by Mr. Vivante.



Mr. Hammerschlag stated that the question of moratorium was independent of the distinction he had suggested. When vis major was caused by a physical calamity, it seemed suitable to adopt the same solution, whether there was a moratorium or not.

It was agreed that the committee should examine the cases of vis major without concerning itself whether there was or was not a moratorium.

Then Mr. Hammerschlag set forth his argument in the following speech:

As I had the honor to state it in the plenary sitting, the reasons which induce us to request that in case of public calamity recourse may be exercised immediately are juridical, economical, and reasons of equity.

From the juridical standpoint, the character of the obligations springing from the bill of exchange requires that such obligations should be extinguished in a short space of time. The prolongation of the term granted for presentment would be contrary to the essence of the bill of exchange.

The indorsers have warranted the solvency of the drawee on the day of maturity and not at some subsequent date. On the other hand, the indorser should warrant the possibility of presenting the bill of exchange. If the house of the drawee is closed, or if the drawee can not be found, protest is drawn and recourse against the indorser is open. If the sum which was at the domicile of the drawee has not been paid on account of the absence of the latter, or if it is lost the next day, the loss shall be borne by the indorser, not by the holder. Likewise, the indorser should be held responsible if the bill can not be presented by reason of a public calamity.

Economical reasons and reasons of equity, I have said, militate in favor of my proposal. If a public calamity occurs in the place of payment, who should be affected by it? In my opinion, it should be the party who has acquired the bill of exchange, because he relied upon the solvency of the drawee alone—that is, the drawer or first indorser. The other indorsers have acquired the bill not only because of the confidence they had in the drawee, but also because of the confidence they had in the previous indorsers. It would be entirely unjust to cast upon the unfortunate holder the entire weight of the calamity. Moreover, chance alone would decide on this point: If the calamity had begun one day later, the bill of exchange would have been indorsed to another person; this person would have been affected and the previous indorser would have been spared. Our solution, on the contrary, is entirely independent of chance. By giving the right to exercise recourse to all the indorsers, it reaches finally the drawer or first indorser alone—that is to say, the party who is in direct and immediate business relations with the country where the public calamity has occurred, and who, by reason of such relations, has issued the bill and caused it to circulate.

Our proposal, moreover, attenuates as far as possible the effects of a public calamity.

Very often the bills of exchange drawn on the same country or on the same place are brought together before maturity in the hands of the same persons. If these holders are not granted recourse against their predecessors, they will find themselves in great trouble and run the risk of incurring failure. Consider the cases of a small banker who cashes drafts on a certain country or a certain town of this country. His indorsers may be manufacturers or tradesmen who are quite solvent. If he is deprived of his recourse in case of a public calamity occurring in the place of payment, he will be ruined, whereas, if the first indorsers alone are held responsible, their number will be much greater, and the risks will be shared by a much larger number of persons.

My proposal has been opposed by Mr. Fischel, who has set forth arguments to which I feel obliged to reply. He has said that his system, consisting in prolonging the delays, has already been applied in Russia, and that the parties concerned were satisfied with it; but we know from our colleague, the delegate of Italy, that our system has also been applied and has given good results. This can be easily explained, because both systems are preferable to the existing one, which deprives the holder forever of his recourse if he does not succeed in having a protest drawn. But this should not prevent us from inquiring which of the two solutions is the more equitable.

Mr. Fischel has said that our proposal would give rise to useless recourse if the public calamity did not last more than a few days, because the holder, by

waiting, would have obtained payment from the drawee. It might even be possible, said he, that the drawee who was solvent would be so no longer when the bill of exchange should come back. But in order to examine the question without prejudice extreme instances should not alone be considered. If the holder has reasons for believing that the public calamity will be over within a few days, he will abstain in his own interest from exercising recourse immediately. He will wait. We give him the right to exercise recourse, but do not compel him to do so.

The chief argument of Mr. Fischel is, in my opinion, the fear he expresses that our system would bring on a great disturbance in business by putting in motion all the bills of exchange drawn on the place where the catastrophe has occurred. No doubt the disturbance will always be considerable in case of a public calamity, but not so much on account of our proposal as owing to the event itself. But the consequences of this event will, in my opinion, be still more grave if we accept the German proposal, because, as I have already said, the burden of the calamity would fall entirely upon the firms which had amongst their bills and securities bills of exchange drawn on the place where the calamity occurred. Serious difficulties would arise with regard to them which might involve their failure and drag down in their fall many other houses.

The situation of the holder would be seriously aggravated if the proposal of Mr. Fischel was adopted. He tells us that the holder would suffer merely a delay in payment, but he would be bound besides to obtain money elsewhere in order to make the payments which he counted upon making with the proceeds of the bills of exchange, which he is not able to present owing to *vis major*.

Finally, the argument of Mr. Fischel loses much of its force if we disregard the cases of moratorium decreed for political or financial reasons.

Upon the whole, I think we are able to maintain our proposition, and I recommend it to the central committee. Assuredly, it will not avoid all inconveniences; but, on our opinion, it represents the most equitable solution of the very delicate question with which we are dealing.

Mr. Fischel referred to the preceding discussions with regard to the arguments he had already set forth in favor of his rule, according to which events of *vis major* would result merely in a postponement of maturity. However, he was anxious to reply to Mr. Hammerschlag and first to agree with him that the question was a particularly delicate one. The end which the conference should seek was not to obviate all inconveniences arising from public calamities with regard to bills of exchange, but to seek a solution which should attenuate, as far as possible, their unfortunate consequences.

The question raised had been long discussed in Germany in 1848. In the course of this discussion there was an agreement on this point, that there could be question only of the prolongation of the delays in presentment and protest. If, finally, there was abstention from introducing into the German law a provision concerning *vis major*, the reason was that it had been found too difficult to define *vis major*, and not that there were any doubts on the system which was to be applied. Since that time many authors, especially Mr. Lyon-Caen in his book, had sought to find a solution, but there had always been question of retarding presentment and the drawing up of the protest without impairing the right to exercise recourse.

The Swedish law regulated the case of *vis major* and in the same way as did the German proposal. The English law of 1882 also made a reference to it in article 46, thus:

When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

It was always the same system. In his opinion it was the natural principle, whereas the immediate sending back of the bill without attempt to present it seemed to him to be an arbitrary solution.

There was unanimous agreement that the strict system by which no delay could be granted in case of vis major and by which recourse was lost—the system which would be the most consistent with the principles of law in the matter—was too rigorous. It was, therefore, necessary to change it, but this should not be done without seeking to deviate as little as possible from the principles which governed the law of the bill of exchange. The German proposal was the nearest to these principles; the proposal of Mr. Hammerschlag deviated far more from them; it went to the other extreme. The German delegates suggested suspending the operation of the bill during the catastrophe. The delegate of Austria wished that the bill should produce all its effects with regard to recourse as soon as the calamity had taken place. He wished to exempt the holder from any effort to present the bill and to relieve him from all responsibility. Was it equitable to safeguard thus the interest of the holder, of the possessor of the bill of exchange? Was it necessary that the consequences of the calamity should fall exclusively upon the indorser (and the drawer)? There were serious doubts about this point.

It might be objected that the indorser warranted payment at maturity, which was quite true; but if one added to this the presumption that he had intended not only to be a security for payment, but also a security for the possibility of presenting the bill, it was permissible to hesitate to accept such a conclusion. Did the indorser really intend to warrant the possibility of presenting the bill in any case, even in case of vis major? He would then have sought to warrant that an impossible thing should nevertheless be accomplished and thus to set himself up against the supreme power. Should such a presumption be admitted? All the arguments of Mr. Hammerschlag pertained to this supposition, the consequences of which were disastrous for the indorser and for him alone. Would it not be better, in case of an impediment arising from an unforeseen case of vis major, to divide the responsibility? Would it not be more equitable that each should bear a part of the burden?

On the contrary, the German delegation required from the holder that he should wait, that he should be patient, and that as soon as the impediment should disappear he should endeavor to present the bill and recover the amount. On the other hand, it required from the indorsers that they should remain bound by their signatures during the same period. It did not seem to them equitable to say that the indorser (or the drawer) had unconditionally warranted the payment of the bill. On the contrary, he had made his liability subject to a duty which was to be performed by the holder; he had promised payment of the draft upon presentment.

Mr. Hammerschlag, in the proposal which he had recommended, relieved the holder unconditionally from such presentment. In the case of the earthquake at Messina, no doubt the two systems would have given rise to the same effects, because the disaster was such that presentment would have been useless. Whether or not a delay had been granted, it would have been necessary, finally, in any case, to exercise recourse; but this case was exceptional, and one should not legislate for exceptional cases only, as a system which was admissible with regard to such a case would not be so in respect to calamities of a lesser importance; and, happily, catastrophes like that which had fallen on Sicily were infrequent. Moreover, it might have been pos-

sible to have a protest drawn up on the place after a short space of time, and then recourse would have been open also, according to the principles which were advocated by Mr. Fischel.

Mr. Fischel thought that the German proposal took into account all interests concerned and constituted a compromise between the strict system of the present and the Austrian system. It prorogued the delays till the moment when, the calamity having ceased, presentment became possible; but this moment was indeterminate, and the argument of Mr. Hammerschlag, who had pointed out the inconveniences involved in a prolongation of the obligation of the signers of the draft, would certainly be correct if it had been proposed to prolong the obligation *ad æternum* or for an indefinite time. But the German delegation had considered this and for this reason proposed that, if the calamity should last more than two or three months—a term open to discussion—the recourse of the holder should be open against the indorsers and the drawer.

Mr. Hammerschlag had quoted examples in support of his theory. Many other examples might be quoted in order to show the basis for the German point of view. Twenty different cases might be found for each of which a new provision would be necessary. It was impossible to anticipate all circumstances, but in establishing a general rule it should be made applicable to the generality of cases. But in examining the cases quoted by Mr. Hammerschlag, Mr. Fischel considered that they did not seem to be convincing. He had spoken of the chance that a calamity might have happened a day later, and that this might have brought about a change of the person who would be affected by the calamity; but in a similar case—where there was an obstruction which prevented reaching a town, which had become isolated through a case of *vis major*—if the catastrophe happened a day later, perhaps, the bill of exchange would have already passed beyond the obstacle, and being at the place, could be cashed without delay.

The second example quoted—that of the small banker whose set of bills and securities was full of drafts drawn on a region affected by a calamity—was assuredly very sad, but Mr. Fischel thought that his colleague had not taken into consideration the fact that by his system he laid a heavy burden on the indorsers. The case quoted was possible, but in practice it would be found that small bankers were much more in the habit of reindorsing the bills which came to them from their customers than of keeping them amongst their bills and securities. It was probable that the obligations they assumed by indorsement much exceeded the amount locked up among their bills and securities. Hence to make them liable to immediate recourse would more easily lead to their failure than did the systems of delays. Moreover, it should be remembered that the holder was the possessor of the draft; he had bought it with his own money; it was property belonging to him that had been damaged by the calamity; and finally, it was he who enjoyed the discount which he had received. On the other hand, the indorser had rediscounted the draft because he could not afford to keep it till maturity. Would he have in his safe the money necessary to reimburse it?

Mr. Hammerschlag, in presenting the example which he had given, had probably thought of the case of Messina. But was it not probable that most of the drafts on Sicily, after having passed through the



hands of the small bankers, were then among the bills and securities of the National Bank of Italy and of the other chief Italian banks? If it had been permitted to send them back immediately, the small bankers would have been seriously injured by the fact that they had indorsed them.

In every crisis it has always been seen that the banks of issue and the other chief banks of credit had done their best to attenuate difficulties, not only by affording the example of patience toward the weak, but also by coming more or less directly to their aid through granting them the new credits of which they had temporary need. Was it not more consistent with this general rule to provide that in the presence of a public calamity there should be an exercise of patience?

The German delegates thought, moreover, that very serious reasons, from the economical standpoint, militated against the system advocated by their Austrian colleague. If every public calamity gave the right to send back immediately the bills of exchange which were due, without any obligation to present them, this would, in the case of very great calamities, give rise to extraordinary disturbance. It should be remembered that the catastrophe itself was the cause of numerous losses; everything was ready for a crisis. If at such a moment hundreds of millions of francs had to be demanded without delay from the indorsers—who would themselves be obliged to apply to their previous indorsers—the financial movement would be augmented in a manner to invoke disaster. Up to the present time, when a country had been affected by a misfortune, it had been simply decided to await its termination, and experience had shown that nearly all engagements had been fulfilled in spite of the catastrophe. The drawees and the indorsers had paid unhesitatingly; but under the system of the immediate sending back of the bills, they would not even have been presented. They would give rise to recourse. By permitting the demand for reimbursement from solvent signers for default of acceptance, the difficulties of the case, already very great, would be increased beyond measure. Men in active business ought to remember the fright caused among tradesmen and bankers by the news of a great failure. What they dreaded was not the direct losses; but the consequences of such a failure might be the failure of many indorsers against whom recourse was exercised. What would be the moral effect, if, in the case of a catastrophe, immediate recourse was permitted?

The German proposal seemed to be an acceptable compromise. It said to the holder: Wait a certain time before exercising recourse against your warrantor; your debtor may be solvent; you may be paid after the calamity has ceased; but if its effects last too long, you are authorized to take recourse against your warrantors. Such a solution seemed to be the most equitable, and of a nature to cause the least possible amount of disaster.

Mr. Vivante stated that the catastrophe of Messina had compelled Italy to examine the two systems which were under discussion. The Royal Government decided to adopt that of immediate recourse. The holders were invited to deposit their drafts at the office of the recorder of the court; those which were not withdrawn within 24 hours by the debtors were surrendered, with the official declaration that they had



not been withdrawn, to the owners, who were granted the right to sue the warrantors for reimbursement.

The German system imposed on the holder all the consequences of the calamity and left in suspense for an unlimited time the responsibility of the indorsers. Moreover, would not such a solution seriously hamper the circulation of the draft and render it more costly? Upon this point experts might be able to inform the committee. Finally, would it be admitted that the holder who incurred the risk of waiting two or three months for payment should not receive during this time any interest on his money?

Did not the committee fear to impose a provision which, in practice, might remain a dead letter? For it would be very easy, by inserting a special stipulation, for banks discounting drafts, to evade its dangerous consequences, by inserting a clause stipulating for the right to return the document in case banking ceased at the place of payment. Mr. Fischel feared that, if the proposal of Mr. Hammerschlag was adopted, the holder would in such cases exercise immediate recourse. No; if the holder knew that the debtor was solvent, he would wait. The apprehensions of the German delegation with regard to this point were not well grounded. But the proposal of the delegate of Germany involved an inconvenience of a general character which was, in the opinion of Mr. Vivante, specially important. It destroyed the solidarity and independence of the acts, which were the essential principles of the law of the bill of exchange. The calamity having happened, the holder would alone bear its consequences; he would alone be affected by it, though it was precisely in such a case of unforeseen misfortune that solidarity should produce its results and permit the holder to avail himself of them by authorizing him to find his reliance where he had placed it—with the indorser.

Mr. Ernest-Picard thought that after hearing such an eloquent development of the two opposing doctrines there would be some difficulty in finding a solution that would give entire satisfaction to a judicial mind. Personally he was inclined to approve, as a matter of principle, the doctrine of Mr. Hammerschlag; but he could not deny the value of the arguments set forth by Mr. Fischel—arguments in favor of which might be invoked the traditional practice in France. It was important, then, to seek to conciliate the two contrary doctrines, and he suggested the adoption of the German proposal, but that the time after which recourse could be exercised should be reduced to one month.

The two systems had been tried. They had given satisfactory results because in practice the parties concerned had concluded arrangements. They should be given the time to do so. One month seemed to be sufficient for such a purpose.

Mr. Fischel was anxious to reply briefly to some of the observations of Mr. Vivante. The latter had been concerned about the question of the interest during the suspension of the delays. It was clear that, as a matter of principle, this interest was due to the holder. If, after a delayed presentment, recourse was exercised on account of a refusal of payment, or if, after the delay granted for waiting for the cessation of the vis major, the bill was sent back to the indorser, the interest calculated from the date of maturity should be included in the amount to be paid. If the drawee paid the bill, with a delay caused

by a case of vis major, the settlement of the interest could be left to the parties concerned. Mr. Fischel desired also to reply to the reproach of disregarding the spirit of the German law, which had been made against him. This law imposed on the parties both rights and duties. Notably, it laid upon the holder the obligation to present the bill. One could grant a delay for making such a presentment without nullifying the spirit of the law. Was it the same when one exempted the holder from making presentment?

Solidarity was kept intact; its effects were merely suspended for a time.

The most frequent cases are those of strikes, which last but a short time; and the German delegation, anxious to show its spirit of conciliation, would accept the proposition of Mr. Ernest-Picard to reduce to one month the prolongation of the delay.

Count Ehrensvard thought that the situation of the indorsers should not be aggravated. This would occur if recourse could be immediately exercised against them. It was said that all the burden was cast upon the holder; but, under the proposal of Mr. Hammerschlag, this burden would hang heavy over the first indorser alone. Where was the advantage? Count Ehrensvard therefore joined in the German proposal.

Mr. Carlin recalled that Section I had admitted the proposal of Mr. Hammerschlag, notwithstanding the opposition of Norway, which had already proposed a compromise by reducing to 15 days the delay which Mr. Ernest-Picard wished to see carried to one month. The Swiss delegation, however, by way of conciliation, would not oppose the proposal of Mr. Ernest-Picard.

Messrs. Hammerschlag, Simons, and Beernaert accepted this proposal in the same spirit.

Mr. Vivante requested that the question should be put to a vote, and the proposal having met with a vote unanimously in the affirmative—Austria, Hungary, Great Britain, and Switzerland abstaining from voting—Mr. Vivante accepted the proposed solution.

Mr. Vivante requested that it should be agreed that the interest should run from the day of maturity. (General assent.)

Mr. Ernest-Picard stated that at the time of the flood in Paris such interest was considered as running according to the rate fixed by agreement of the parties. If the Bank of France had not required the payment of such interest, it was only from its own good will and to support its part in the general misfortune.

On the request of Mr. Sichermann the committee decided that recourse should be exercised according to the provisions contained with regard to this matter in the report of Section II.

Mr. Fischel stated that it would be necessary that the holder should give notice of nonpresentment.

Mr. Ernest-Picard said that such a notice was always given in practice, but that it was useless to make it obligatory. (General assent.)

Sir Mackenzie Chalmers was desirous of making a statement concerning the case of personal vis major, which the committee had decided not to take into account. He made on this subject the following declaration:

The question of vis-major is a very important one.

Should he be allowed to explain the Anglo-American law and the reasons on which it was grounded? This law applied to nearly 150,000,000 persons, not including British India, and had been approved by more than 50 legislatures; so it would be no easy matter to change it.

A preliminary explanation was to be made. The duty to make protest did not exist in regard to internal bills. Concerning bills of exchange which circulated from one country to another, protest was considered as a formality purely, required by the law of nations. With regard to England, the essential question was a prompt notice to the drawer and to the indorsers in case there was a refusal of acceptance or of payment of the bill. Notice gave them the opportunity of taking the necessary steps in order to protect their interest.

So the English law on *vis major* applied to all the duties of the holder, whether presentment, protest, or notice, and in all such cases the penalty for breach of the law was forfeiture. The duties of the holder were individual and private, not public. Sir Mackenzie thought that a law which obliged a person to do things that were impossible, under legal penalties, was not equitable. The law should always be reasonable. A person might bind himself by a contract to do something that was unreasonable, and then, if he was not able to fulfill the conditions of his contract, he had to pay damages. But the law should not impose the impossible conditions. With regard to the holder, to be hindered from complying with his duties toward the drawer and the indorser either by a public calamity or by a moratorium came to the same thing. If he was crushed, either in an earthquake or by a motor car, it was the same with regard to him. An epidemic of cholera or smallpox might be supposed. When would this become a public calamity? According to the English law, it was sufficient that the holder had done his best in order to comply with his duty. The formula of the English law was that delay was excused if it had been caused by circumstances independent of the holder and not imputable to his negligence. There was another reason for the English law; the suit grounded on inequitable gain was unknown to it. Hence the penalties of noncompliance with the law were more severe. This explained partially the disagreement between the English law and the laws of the other countries.

No other observation having been made, the chairman observed that the central committee had terminated the examination of the labors of the sections. It remained to hear the reading of the resolutions, which the "rapporteurs" had consented to put in form.

Mr. Lyon-Caen was anxious, in the name of all the committee, to thank Mr. Asser for the activity, the high intelligence, and the devotion with which he had presided over its labors. Without him, it could not have ended, as it had, in a manner so prompt and satisfactory. The appreciation of the committee was so much the greater, as it was known that he had numerous and important occupations. Perhaps this had not always been sufficiently taken into account. The length of the sessions might have been shortened, in order to spare the time of the chairman. But the main responsibility for that devolved on him; he had infused into the committee an abounding activity. [Loud applause.]

The chairman said he was grateful to Mr. Lyon-Caen for the words which had been addressed to him in the name of the committee. He

stated that his duty had been made easier by the zeal, the assiduity, and the learning of all the members. He should retain the pleasantest memories of their common labors.

The sitting was terminated at 1 p. m.

#### TENTH SESSION, JULY 16, 1910.

Chairman, Mr. Asser.

The sitting was opened at 4.30 p. m.

The chairman proceeded to read three letters—from Mr. Vivante, Mr. Wieland, and Mr. Wurth-Weiler—who had written to him that they were obliged to leave The Hague. Mr. Sylvain also had informed him that he was delayed in Paris, but hoped to be able to attend at the next plenary sitting of the conference.

Mr. Lyon-Caen and Mr. Simons, rapporteurs of the committee, had drafted the resolutions adopted by the latter. These had been printed and distributed to the members of the committee.

The chairman, after having congratulated and thanked the rapporteurs for the excellent work they had completed within so short a time, pointed out that the duty of the committee would consist, not in discussing the subject-matter of the resolution, but merely in examining whether or not the rapporteurs had expressed the conclusions of the committee accurately and fully. The report itself, to which the resolutions would be annexed, would be communicated to the members of the committee later on and be discussed by the conference itself.

Sir Mackenzie Chalmers made the following remarks:

I beg to be allowed to express the appreciation of the British delegates for the admirable work done by our rapporteurs, Mr. Lyon-Caen and Mr. Simons. During five years I have been the official editor of the drafts of law of the British Government. Hence I am aware from severe personal experience of the difficulties of their labors. They have given us the results of long and often complicated discussions in a series of resolutions of admirable clearness and precision, and I am anxious to congratulate the rapporteurs with all my heart on a labor which is a veritable intellectual masterpiece.

Mr. van Gelderen joined in the conclusions of Sir Mackenzie Chalmers, and proposed to submit the resolutions to the conference with the wish that they should be recommended to the various governments for adoption.

Mr. Carlin requested that the question concerning the form to be given to the draft, which was to be presented to the various governments, should be reserved until after the resolutions had been read.

The chairman proposed to proceed thus. He would read the resolutions, and after the reading of each article he would give the floor to the members who desired to make observations. [General assent.]

#### *Article 1.*

Sir Mackenzie Chalmers proposed to add to paragraph 3 that the clause to bearer should also suffice to give to an instrument the character of a bill of exchange.

The chairman stated that such an addition would be contrary to a formal decision of the committee.

*Article 2.*

The chairman thought it would be useful to state expressly that all bills of exchange were transferable by indorsement, even though they did not contain the clause "to order." (Adopted.)

Mr. Simons pointed out that the committee had not declared itself on the question how an instrument should be treated drawn on the drawer himself and at the same time to the order of the said drawer. Mr. Simons thought that in such a case it was not a bill of exchange which was in question, but rather a promissory note to order. (General assent.)

*Article 3.*

Mr. Fischel suggested giving to each State the power to prohibit bills of exchange to bearer not only if they were drawn on or payable in its territory, but also if they were guaranteed or accepted there.

After a discussion the committee decided to adopt this proposal, but only with regard to guaranteed bills to bearer.

The chairman stated that article 3 applied without distinction both to bills to bearer drawn at sight and to other bills to bearer.

No discussion occurred upon articles 4 and 5.

*Article 6.*

The chairman proposed the following form:

(Par. 1.) Save the provisions stated in paragraph 2, the document in which, etc.

(Par. 2). The bill of exchange of which the maturity, etc.

Mr. Cloos pointed out that the signature of the drawer was not set forth in article 1, as an essential particular.

The rapporteurs made note of these observations.

*Article 7.*

Mr. Simons said that there was a gap in the resolutions which might be filled here. No provision had been made with regard to the effects of a declaration made in a bill of exchange by a party who was not capable of obligating himself by a bill. The principle should be laid down that such a declaration should not impair subsequent declarations.

The committee adopted this principle with reservations concerning the form.

No observations were made upon article 8.

*Article 9.*

Mr. Simons pointed out that the provision of paragraph 2 was not sufficiently clear. The drawer might indicate a referee who should accept in case of need or pay for honor. But if the indication of such a person was not accompanied with the statement "for acceptance" or "for payment," it should be presumed that a case of need concerning payment was in question.

The committee concurred in this view.

No discussion occurred upon article 10.



*Article 11.*

The chairman thought that in paragraphs 2 and 3 there should be a statement concerning not only the indorser, but also the drawer.

Mr. Simons suggested that paragraph 3 should read as follows:

The indorser who has transferred the drafts to different persons and the subsequent indorsers shall be bound, etc.

(General assent.)

Sir Mackenzie Chalmers inquired what would be the decision in case two drafts were accepted.

The chairman replied that such a question had been decided by implication in the paragraph, but it would be proper to express it more explicitly.

*Article 12.*

Mr. Fishel made the following observation:

Besides the case of sending a bill for acceptance, there is another analogous case which occurs rather frequently in trade and banking. At the time of the acquisition of a bill of exchange the first draft had already been sent to the acceptor by the drawer or by an indorser, and the delivery is made by one or several duplicates (or copies). The buyer wishes to sell the bill, but at the same time wishes to ascertain if the bill had been accepted. He sends the second draft to his correspondent in order that the latter may withdraw the first draft from the depositary and thus leave the latter as well as the second draft at the house of the correspondent, who thus becomes a second depositary. On the third draft the buyer writes the statement, "First draft accepted and second at so and so's," and puts in circulation the third draft (or a copy).

It is clear that in such a case the obligation of the depositary includes also the delivery of the second draft, the latter being perhaps clothed with indorsements which are not to be found on the first draft.

The question is whether the text of article 12 is too restrictive, and if there is occasion to regulate explicitly the case above stated and other similar ones, or if the committee should be content with a form which, like that of article 12, reproduces exactly the provisions of laws now in force. In practice, up to the present time, such cases have not given rise to any inconvenience. They have been regulated without difficulty by analogy without being expressly set forth in the laws.

The committee decided that there was no occasion to regulate this matter expressly. The general opinion was that interpretation of the above quoted cases should be made, as it had been up to the present, by analogy.

No discussion occurred upon articles 13 and 14.

*Article 15.*

Sir Mackenzie Chalmers suggested that it be stated, in paragraph 2, that the indorser should be warrantor of acceptance and payment, except for a contrary stipulation. This was adopted.

No observations were made upon article 16.

*Article 17.*

Sir Mackenzie Chalmers set forth that in England the following question had been much discussed: An indorsement in blank was succeeded by another indorsement, and a person other than the beneficiary of the latter indorsement had become holder of the bill. Had the holder the right to cancel the name of the beneficiary?

The committee was of the opinion that such a case should not be passed upon.

No observations were made upon articles 18 and 19.

*Article 20.*

Mr. Simons pointed out the difficulties which would arise if the national laws were granted the power to permit indorsement by pledge without determining the forms and effects of such an indorsement. It was necessary that the uniform law should determine the matter, and that the committee should agree on this matter with the committee on private international law, to which the question had been referred.

The chairman replied that the committee on form which was to be appointed would reach an understanding on this question.

No observations were made upon articles 21 and 22.

*Article 23.*

The chairman pointed out that paragraph 1 contained an error.

There had been wrongly excluded, in the case of bills drawn at a certain time after sight, the clause which made obligatory presentment of such bills for acceptance. It was merely the clause prohibiting presentment for acceptance which should not be added to a bill drawn at a certain time after sight, as it was expressed in paragraph 3 of the said article.

Mr. Simons added that, through error, paragraph 3 did not mention the "domiciled" bills, in which the clause prohibiting presentment for acceptance could not be inserted.

The committee decided that paragraphs 1 and 3 should be changed in accordance with these two observations.

Mr. Simons proposed, with regard to paragraph 2, the question of the penalty of the provision under which an indorser had not the right to insert in his indorsement the clause "not subject to acceptance," when the bill of exchange was previously susceptible of acceptance. His opinion was that, in such a case, the clause should be considered as null.

The committee agreed in this opinion.

No observations were made upon article 24.

*Article 25.*

Mr. Lyon-Caen said that the delegate for Bulgaria had requested that it should be stated, in paragraph 2, that if an acceptor had modified his acceptance, he should be bound according to the terms of his acceptance "by virtue of the bill of exchange." Mr. Lyon-Caen declared, with the assent of the committee, that it had been intended

to leave to the courts the question whether, in such a case, the acceptor should be bound according to the law of exchange or according to the civil law.

*Article 26.*

On the suggestion of Mr. Cloos, in paragraph 1, the words "the acceptor shall indicate," were substituted for the words, "the acceptor may indicate."

Mr. Schneider proposed to add, in conformity with the German draft (article 24), the words, "in default of such a statement, the drawee shall be presumed to have bound himself to pay personally at the place designated."

*Article 27.*

Sir Mackenzie Chalmers declared that, according to the English usage, the acceptance should be dated as of the day of presentment and not of the day of acceptance.

*Article 28.*

Mr. Cloos proposed to provide that the acceptor should lose the right to cancel his acceptance not only when he had given notice in writing of his acceptance to the holder or to an agent of the holder, but also when he had given such a notice to the drawer.

Mr. Fischel said his opinion was that one should go still further and state that "the acceptor should lose such a right" once he had given written notice of his acceptance to a party liable, to the holder, or to an agent of the holder. It often happened that the acceptor—for example, a banking house—had received the draft directly and was at the same time intrusted with the custody of the draft for another indorser. It was thus at the same time the acceptor and the agent of an indorser who, at the time of indorsing the draft, had inquired from the drawee if he had placed his acceptance on it. In such a case there was no objection to giving a notice served by the acceptor on such parties the same consequences as a notice served upon the holder.

The chairman thought it should be sufficient to adopt the proposal of Mr. Cloos.

The proposal of Mr. Fischel was then put to a vote, the results being that all the delegates answered in the affirmative. The delegates of Belgium, Italy, and Luxemburg were not present.

No discussion occurred upon articles 29 and 30.

*Article 31.*

Mr. Lyon-Caen declared, with regard to paragraph 2, that the two rapporteurs could not agree concerning the resolution taken by the committee. One of them thought that the committee had granted to the national laws the power to assimilate to protest any other formality, whatever it might be; the other had understood the resolution as implying that the national laws could only assimilate to protest a statement written on the bill of exchange itself, made within

the time allowed for protest, and dated, signed, and registered within the same time.

The chairman thought that the committee had merely wished to authorize a declaration, without determining its exact character.

Mr. Simons, on the contrary, said that the committee had adopted the proposal of Section I, which required a statement in the forms above prescribed.

The question whether or not the national law might assimilate to protest any other formality was then put to a vote.

All the delegates having answered in the negative, the said assimilation was restricted to a statement which was to be written on the bill itself, made within the time allowed for protest, dated, signed by the drawee, and registered within the same time.

Mr. Hammerschlag pointed out that it had been forgotten to deal with notice of refusal of acceptance, which ought to be made in the same way as notice of nonpayment. (General assent.)

### *Article 32.*

Mr. Cloos proposed to add, in conformity with article 66, that the holder should not be bound in his recourse by the order in which the indorsers and other signers had bound themselves, and to add also that in conformity with article 67 the holder might reclaim the costs of the notices he had given. (General assent.)

Mr. Simons wished to change the first part of paragraph 2 in order that the holder might choose, with regard to deduction, the official rate of discount or the market rate.

Mr. Fischel supported this proposal by stating that he also preferred the term "market rate" (*marksatz*) to the term "rate of discount in the open market." The holder should be indemnified in order that he might get another bill of exchange to be substituted for that which had not been accepted. In order to give him satisfaction on this point, it was necessary to permit a calculation according to the market rate, because very often an "open market rate" of discount did not exist at the domicile of the holder. There were also countries in which there existed neither a quoted rate of discount nor an official rate; but the "market rate" could always be determined.

Part 1 of paragraph 2 was changed in accordance with these observations.

No discussion occurred upon articles 33 and 34.

### *Article 35.*

Mr. Hammerschlag proposed to apply the regulations contained in this article also to the case of failure, of suspension of payments, and of embarrassment of the drawee who had not yet accepted. His opinion was that the situation of the holder was the same in the two cases, whether it concerned a bill which had been accepted or one not yet accepted. This was obvious if the case of a bill not subject to acceptance was considered.

Mr. Jitta supported this proposal.

Mr. Lyon-Caen stated that it would not be possible to give an immediate right of recourse if the drawee had not yet accepted. The drawee who had not accepted was not liable. Till acceptance had

been made, the principal party liable was the drawer. For this reason the French law provided that the failure of the drawer gave the right of recourse to the holder of a nonaccepted bill.

Mr. Simons said that the German draft had admitted immediate recourse in the case of the failure of the drawee nonacceptor, but the committee had not supported this proposal and it would not be proper to resume the discussion here. With regard to bills not subject to acceptance, which had been dealt with by Mr. Hammerschlag, it should not be forgotten that nobody was bound to take such a bill, and that whoever took it did so on his faith in the drawer and not in the drawee.

Mr. Hammerschlag withdrew his proposal.

#### *Article 36.*

The committee concluded that it would be well to add at the end of this article the words "other than the drawee-acceptor."

#### *Article 37.*

The chairman recalled the observation of Mr. de Menezes, made at a previous sitting, that each State should remain free to regulate in the way it deemed proper the form of the notice by which the intervenor for honor was bound to make known his intervention to the party in whose favor he had intervened.

No observations were made upon article 38.

#### *Article 39.*

Mr. Jitta objected to the formula, "the acceptor who pays at maturity has a recourse." According to the existing system, the acceptor was bound without regard to protest. Hence, it was sufficient that he pay—the time when he did it was indifferent—in order to be granted recourse.

Mr. Simons said that, in his opinion, it would be proper to regulate this question when the matter of regulating recourse was reached.

Mr. Jitta pointed out that the expression "in the same way as the latter," used to indicate that the acceptor for honor was bound in the same way as the party for whose account he had intervened, was ambiguous. He would prefer another expression, for example, "he shall be bound in the same way as the party for whom he is substituted."

Mr. Lyon-Caen stated that there was agreement on the substance. The observation made by Mr. Jitta concerned merely the form. When the revision of the articles was taken up it would be considered whether it should be taken into account.

Article 40 was adopted.

#### *Article 41.*

Mr. Schneider suggested that this provision be excluded, as it might give rise to doubts. If the bill of exchange was signed by two drawers, the signature of the second might, according to this paragraph, imply a guarantee given for the first drawer. What should the former do in order to avoid this ambiguity? Should he



add to his signature the statement that he had signed the bill as second drawer? But to require such an explanation would not be convenient.

Mr. Lyon-Caen replied that the drawee of the bill ought to give all necessary indications on this point.

The chairman added that the text only followed the practice.

Mr. de Menezes thought, however, that paragraph 3 of the article did not exclude all possibility of misunderstanding.

Mr. Lyon-Caen replied that when the signature on the face of the bill was that of the guarantor it should be considered as given, in the absence of any other signature, for the drawer.

Mr. Simons thought that the last paragraph might lead to nullifying the signature of which Mr. de Menezes had spoken.

Article 42 was adopted.

#### *Article 43.*

Sir Mackenzie Chalmers asked the import of the words, "at sight." Were the words "on demand" or "on presentment" included in them?

Mr. Lyon-Caen replied that the bill was payable at the moment on which the holder presented it to the drawee. In Great Britain, for a long time, the three days of grace were allowed, even for bills payable at sight; there were excluded only those which were payable "on demand." Now, English legislation assimilated bills "at sight" to bills payable "on demand."

Sir Mackenzie Chalmers confirmed the accuracy of this statement, except with regard to Canada, where the difference had been maintained.

Articles 44, 45, and 46 were adopted.

#### *Article 47.*

Mr. Fischel pointed out that, if a bill payable at a certain time after sight had been presented, and if it had been accepted, the time after sight should run from the date of presentment, even though acceptance had been placed on the bill only 24 hours afterwards, as was permitted by the draft of the uniform law. It should be the same in case of refusal to accept in spite of the fact that protest could only be drawn one day after presentment. Harmony should be established between the act of protest and the act of presentment, by deciding that the delay after sight, in case of protest, should run not from the day on which acceptance had been refused, but from the day on which the bill had been presented for acceptance.

Mr. Lyon-Caen said that the question was limited to determining the time from which bills drawn at sight should run. Was it from presentment or was it from acceptance?

Mr. Carlin replied that it was from presentment.

Mr. Fischel laid down the principle that nonpayment should cause prejudice to no one. If a bill drawn at a certain time after sight was accepted, it was reasonable to make the delay run from the date of presentment for acceptance.

The chairman observed that there might be a doubt with regard to the moment on which presentment for acceptance had taken place.

Mr. Simons quoted article 20, section *d* of the German law. The delay granted for drawing protest for nonacceptance ran from the time when the bill should have been accepted.

Mr. Fischel regretted not to be able to give to this language the importance given to it by his colleague, because the German law did not give to the drawee the delay of 24 hours granted by the uniform law. The moment of presentment and the moment of acceptance were confused together according to the German law. There would be two different dates in the system which was to be established.

Mr. Ernest-Picard pointed out the difficulties to which the system of Mr. Fischel might give rise: they all concerned the matter of proof. In requiring proof of the moment of presentment one became involved in inextricable difficulties. It would be better to make the delays within which protest could be drawn run from the moment of nonacceptance.

Mr. Hammerschlag thought also that it would be better to make the delay run from the moment of the refusal of acceptance.

Mr. Fischel said that the word "sight" meant presentment. It seemed to him difficult to prove that the day on which the bill had been presented was not the day on which the drawee had seen it. In England and in Germany, according to present practice, the time after sight ran from the date of presentment. He did not see why it could not be agreed that, in case of refusal of acceptance also, the delay should run from presentment.

The president insisted on the difficulties of proof involved in such a system.

Mr. Fischel abandoned the request that the delays for protest should run from the day of presentment, but asked that it should be agreed that, with regard to an accepted bill, the delays should run from presentment for acceptance, and that a modification to this effect should be made in article 24. This was adopted.

Articles 48, 49, 50, and 51 were adopted.

### *Article 52.*

Mr. Lyon-Caen said that paragraphs 1 and 2 applied to two different instances. Paragraph 1 assumed the case of a bill of exchange payable at a fixed date, drawn from Paris on St. Petersburg. In such a case the date of payment would be calculated according to the calendar used in St. Petersburg; but paragraph 2 supposed the case of a bill drawn from Paris on St. Petersburg at three months from date; then the delay should be calculated according to the Gregorian calendar.

The chairman made some reservations respecting the form, but proposed the adoption of the text.

Mr. Fischel pointed out that "stipulation to the contrary" was allowed. He inquired if such a formula expressed correctly the idea set forth by the German draft in using the expression "save for contrary intention of the parties." (Article 9 of the draft.)

The chairman answered affirmatively.

Mr. Simons said that the text had wrongly subjected to the same rule bills payable at a certain time after sight and bills payable at sight. The former should be presented for payment; the latter

should be presented for acceptance, in order that the stated time after sight might run.

Mr. Lyon-Caen proposed that the article be recast in this way. (General assent.)

*Article 53.*

Mr. Mayer inquired if the central committee had not decided to consider delivery of the bill to a clearing house as a payment.

Mr. Lyon-Caen replied that the question might have been discussed by the sections, but had not been discussed by the central committee. It seemed to him that it should be left to national laws. (General assent.)

*Article 54.*

Mr. Hammerschlag requested that discussion should be resumed on the provision by which the drawee should not be discharged unless he had verified the identity of the holder. He did not intend to discuss the matter itself without having been given the right to do so by the committee, but he foresaw that such a rule would create many dangerous complications. Very often the payer in good faith would hesitate to pay, and the payer of bad faith would avail himself of this rule in order to escape his obligations. Hence, he raised against it the most serious objections.

Mr. Fischel supported the observation of Mr. Hammerschlag.

Mr. Hammerschlag added that a similar provision had been suggested and discussed in the German committee intrusted with the framing of the Wechselordnung. After a long discussion it had been decided that the law should not contain such a provision, because it was feared that it might facilitate quibbles.

The chairman, on the insistence of the delegates of Austria and Germany, proposed to the committee to give to the rapporteurs full power to seek a formula which would meet the doubts of Mr. Hammerschlag and Mr. Fischel. (General assent.)

*Article 55.*

Mr. Lyon-Caen inquired if the whole of this provision could not be set aside.

Mr. Hammerschlag supported this proposal, and pointed out that he had caused a proposal of this nature to be adopted in the sitting of July 13.

The committee struck out the article.

*Article 56.*

The chairman recalled that this article was the consequence of the proposal made in the committee by Mr. Fischel, which had been accepted.

Mr. Schneider said that the national law should determine whether or not the holder could require actual payment in foreign money. According to the Russian law, such a clause was of no effect.

Mr. Simons requested that it should be added that the laws in force at the place of payment should determine also the value of the foreign money. (Adopted.)

Mr. Fischel wished that, in accordance with the German draft, the text should use, instead of the term "the parties," the words "the drawer may stipulate another method of calculation." (Adopted.)

Articles 57 and 58 were adopted.

#### *Article 59.*

Sir Mackenzie Chalmers requested that paragraph 3 should exclude the acceptor from the persons who might pay for honor. (Adopted.)

Articles 60, 61, and 62 were adopted.

Mr. Simons pointed out that it was here that a statement should be made about the obligation of presentment to the referee and about all collateral obligations.

Article 63 was adopted.

Mr. Schneider said that the words "except for a contrary provision of the law of the country in which the bill of exchange is payable" should be added to the last provision of paragraph 1. According to the Russian law, in case of presentment of the bill to the drawee by the notary, protest should be drawn on the next day, if payment was not made before 3 o'clock of that day.

Article 64 was adopted.

#### *Article 65.*

The chairman recalled the observation he had made with regard to acceptance. He pointed out that, whereas the default of notice of nonpayment addressed to the indorser could be supplied by an ordinary letter, under certain conditions, the text was silent concerning such a method with regard to notice of nonpayment given to the drawer.

Mr. Schneider said that it should be added that it was left to the national laws to impose on the public functionary intrusted with the drawing of protest the duty of giving notice to all the parties liable.

Mr. Fischel wished that, apart from the notification of the notice of nonpayment, the obligation should be prescribed to give a copy of the notice served on the indorser himself. He referred to the explanations he had given in the previous sittings, in which his proposal had been accepted.

The chairman stated that this was more a question of form than a question of matter.

Articles 66, 67, 68, 69, 70, and 71 were adopted.

#### *Article 72.*

Mr. Simons requested that the word "States" should be substituted for the word "Governments." (Adopted.)

#### *Article 73.*

Mr. Simons raised the question whether or not the parties liable have the right to reimburse the bill.

The chairman recommended this question to the consideration of the rapporteurs.

Articles 74, 75, 76, and 77 were adopted.

*Article 78.*

Mr. Cloos requested that the article should state that protest must be drawn in due time.

The chairman proposed to insert a clause of this character. (Adopted.)

Mr. Jitta begged, in justice to himself, to make two observations. The first one concerned the effects of prescription. The scope of prescription was very dangerous; hence it was important to make it very clear. It was important to state clearly whether or not, in view of the joint liability of the signers of the bill, the causes of interruption against one of the debtors also interrupted prescription with regard to the others.

Mr. Lyon-Caen said he saw no objection to such specification.

Mr. Jitta proceeded to the suspension of prescription. The question whether a time limitation without remission or a prescription was involved had been the occasion of many controversies. Ought it not to be said that the prescription applying to the bill of exchange was not suspended by the personal situation of the creditor, minority, interdiction, etc.?

The chairman did not think it necessary to decide in a law relative to the bill of exchange those questions which concerned the nature of prescription in general.

Mr. Jitta making no objection, article 78 was adopted.

Mr. Lyon-Caen inquired if it was settled that the question of the oath should not be dealt with. (Question 32 of the Questionnaire.)

The chairman recalled the decision of the committee, which was not to deal with the subject.

Articles 79 and 80 were adopted.

Mr. Schneider said that there were other provisions which ought not to apply to promissory notes to order. For example, according to the Russian law, the provisions concerning bills drawn in a set and copies, as also recourse against the maker on account of his insolvency.

The "general resolutions" were adopted.

Mr. Carlin requested that the central committee should propose to the conference to express the wish that a subsequent conference should regulate the check.

The chairman stated that without doubt such a wish would be suggested to the conference.

The "special resolution" was adopted.

Mr. Schneider declared that the provisions of fiscal laws should not be altered by the uniform law.

The chairman announced that if the conference was prolonged later than the next Friday, Mr. Lyon-Caen would not be able to take part until the end of its labors. He suggested to the committee to appoint Mr. Carlin assistant rapporteur. [General assent.]

Mr. Carlin expressed his gratitude for such a token of confidence.

Mr. Lyon-Caen was anxious to congratulate the national printing



office for the way it had acquitted itself of its duty, which had been in some instances very heavy.

The chairman thanked Mr. Lyon-Caen for these words, which he should not fail to transmit to the Dutch Government and to the manager of the printing office.

Mr. Carlin proposed the following motion:

The chairman shall revise the text of the resolutions together with the rapporteurs upon the basis of the observations which have been accepted.

In order to make the text of the resolutions consistent with that of the proposals of the committee on private international law, to which many questions had been referred, the chairman and the rapporteurs shall confer with this committee, with the aim of framing a draft of a proper character to be submitted to the full conference.

The motion was carried.

The chairman closed the labors of the committee, and declared the sitting terminated at 7 p. m.



## V. REPORT OF THE CENTRAL COMMITTEE, PRESENTED TO THE CONFERENCE BY MESSRS. LYON-CAEN AND SIMONS.

The central committee, having examined the responses of the five sections to the questions proposed in the Questionnaire of the Government of the Netherlands, has found that they contain a number of divergences. None, however, appear to be of a nature to render an agreement impossible nor even very difficult.

After having examined successively the responses given by the sections and having discussed each question, the central committee has adopted certain resolutions. In order to reduce them to precision the rapporteurs have thought it necessary to present them in the shape of articles. The principal arguments for these resolutions will be indicated in the present report, to which are annexed the resolutions adopted. Among these there are some which, by reason of their purpose, could not well appear in a uniform law, but it will be useful to set them forth in order that they may serve as a guide to those who may be charged with framing the text of such a law and to decide upon the terms of the international convention to be concluded.

In the explanations which follow we shall observe the order in which the resolutions proposed are arranged in the annex to the present report. It may be necessary to somewhat modify this order in the uniform law.

### CHAPTER I.—OF THE CREATION AND THE FORM OF THE BILL OF EXCHANGE.

#### *Article 1.—Phraseology of the bill of exchange.*

The central committee has agreed unanimously that the bill of exchange should contain all the particulars which are derived from its character (amount to be paid, name of the purchaser, name of drawee, date of maturity, place and date of issue, place and date of payment, etc.).

It was also decided with unanimity that the bill of exchange need not indicate what value has been given, and also that it might be payable in the place of its issue. Both these requirements have now been dispensed with in most countries.

But the committee found itself divided, as the sections had been, upon the point whether a document, in order to constitute a bill of exchange, should necessarily contain a designation as a bill of exchange in the language of the country in which the document is written.

The solution, absolutely affirmative, provided by the German Wechselordnung and by the laws which are based upon it (Hungarian, Swiss, Scandinavian, and other laws), is justified by very strong considerations. By the requirement in question the attention of

signers and of the holder is drawn to the nature of the document. This may seem necessary by reason of the special and rigorous rules to which the bill of exchange is subject.

But against this system objections have been made of two sorts. It has been criticised by some for creating artificial causes for nullifying the document by refusing the character of a bill of exchange to a document which does not contain this designation, although it includes every other particular constituting a bill of exchange. It is maintained, on behalf of these critics, that it should suffice that a bill contains all the particulars which are derived from its character. This is the system in force in Great Britain and in the United States of America.

Others, without denying the advantages of the German, Hungarian, Swiss, Scandinavian, and other systems, have made the observation that it would be very difficult, if not impossible, to introduce into the countries where it is not at present required that the designation of the bill of exchange should be inserted in the document. They do not think practicable a change in usages which are very old and with which the parties interested declare themselves fully satisfied.

An intermediate system, proposed originally in the name of Switzerland, has therefore been adopted. The uniform law will require, in principle, the insertion of the designation as a bill of exchange; but it will be left to national laws to decide whether the insertion of the clause "to order" shall suffice to constitute the document a bill of exchange without the special designation if it contains the other particulars required.

Thus in all the contracting countries designation as a bill of exchange will confer on a document the character of such a bill; but in countries where the law makes use of the power reserved to them, the insertion of the clause "to order" shall be considered as equivalent. It is to be hoped that in fact in these latter countries the custom of inserting the designation as a bill of exchange will spread and that thus, little by little, this designation will be generally employed.

This solution has great advantages, but it does not satisfy those countries in which neither the designation of the bill of exchange nor the clause "to order" have been required. It has therefore been proposed to leave to the law of the country of the issue of the document to determine the form of the bill of exchange. This solution would have the advantage of taking account of all the laws now in force, but it would have the grave disadvantage, hostile to the end sought, of leaving in force existing diversities in legislation. It is this consideration which has prevented its adoption.

*Article 2.—Transfer by indorsement; bills of exchange to order of the drawer, for account of a third party, or drawn upon the drawer himself.*

This article contains several provisions.

(a) It provides that every letter of exchange shall be transmissible by indorsement, excepting only the cases dealt with in article 3, those in which the bill of exchange is to bearer or is declared not to be to order. In consequence, in all countries the bill of exchange will be

**indorsable.** It will be so everywhere by this fact alone, that the designation as a bill of exchange shall be inserted in the document and, by virtue of the clause "to order," in the countries where the law shall have decided that this is sufficient to make the document a bill of exchange.

(b) This article provides, in conformity with the laws of all countries, that the bill of exchange may be made to the order of the drawer himself and that it may be drawn for account of a third party.

The committee do not think there is occasion to enlarge upon the provisions in regard to these two forms of bills. The rules to be applied result from the general principles of law.

The article admits also the bill of exchange drawn by the drawer upon himself. This is a form of bill of exchange employed especially by banks which draw drafts upon their branches. The absolute necessity for these bills of exchange is not manifest, because the same result would be reached by drawing notes to order payable at a branch; but in some countries these bills are very numerous. As, therefore, they present no inconvenience, it is proper to recognize their existence in the uniform law.

*Article 3.—Bills of exchange to bearer not transmissible by indorsement (Rektaklausel).*

As has been stated above in connection with article 2, bills of exchange are in principle transmissible by indorsement. But is this a rule which is absolutely essential? The central committee did not so consider it. It proposed, by a majority, to permit the bill of exchange to bearer, transmissible in consequence from hand to hand.

Various objections have been made to this proposition. It has been pointed out that in the great majority of countries bills of exchange to bearer are not permitted; that there is no demand for them; that they are less easy to discount than bills to order; and that the creation of such bills of exchange might impair the privileges of the establishments which issue bank notes. But it has been contended that bills of exchange to bearer are permitted in Great Britain and in the United States of America; that in these countries it is not desired to renounce the power of creating them, and that those who desire to have their drafts easily discounted need not give them this form.

Only in order to recognize the exception derived from the privilege of the issue of bank notes, the uniform law will not make obligatory upon the contracting States the admission of bills of exchange to bearer. The laws of each State will be allowed to prohibit this form of bill for those which may be drawn, payable, accepted, or guaranteed within their limits.

It has been proposed to decide that the bill of exchange to bearer might be converted into an instrument to order by means of an indorsement made by a holder. This solution has been rejected. It has been considered that the original form of the document ought not to be capable of modification at the will of a person into whose hands it may have passed. In the absence of this restriction the position of the drawer and of the drawee might be modified without their consent and even without their knowledge.



The central committee has admitted that the transmission of a bill of exchange may be prohibited by the insertion of the words "not to order," or an equivalent clause. In such a case the bill will not be transmissible by indorsement, but nothing will prevent transmitting it under the ordinary forms of assignment.

Would an indorsement of such a bill of exchange have the effect of an assignment? This question, which has been a subject of discussion in the countries where the clause concerned is permitted, is left for the consideration of the courts. It is important to remark that in all the contracting countries, without distinction, a document evidently will not be valid as a bill of exchange to bearer or as a bill of exchange nontransmissible except when it bears the designation of a bill of exchange.

*Article 4.—Clause relating to interest.*

Bills of exchange sometimes contain a clause according to which the amount shall bear interest to maturity. It has been asked if the common law should concern itself with this clause. It has been maintained that it ought not to refer to it, because it concerns a clause which is very rare. The majority, however, has been of a different opinion. The clause with interest is frequent in bills of exchange payable in countries beyond sea.

This clause, however, has no real utility in bills of exchange payable at a fixed date. The date of maturity being known at the moment of the issue of the bill, the amount of interest up to maturity can be included in the amount of the bill. In such bills of exchange the interest clause has even the disadvantage of facilitating usury. Usurers are able to stipulate in this clause interest at a very moderate rate, after having included in the bill interest at a high rate, and thus appear to receive only the moderate interest due by virtue of the special clause.

In view of these considerations, the majority of the committee favored authorizing the interest clause only in bills of exchange payable at sight or at a certain time after sight. The maturity of these bills being indefinite, the interest to run to their maturity could not be included in their amount. If, contrary to this rule, the interest clause should be inserted in a bill of fixed maturity, the bill would none the less be valid, but the clause would be considered null. This solution is that adopted by the German law in accordance with one of the agreements of Nuremberg.

It goes without saying that in the interest clause the rate of interest should be indicated. In default of such an indication, what rate is to prevail? Various systems have been proposed. It has been maintained that the clause should then be considered as null; also that the rate of interest should be determined according to the legal rate in the country where the bill of exchange is payable. The central committee concluded by a majority that it is preferable to provide that the interest, where the rate is not fixed by stipulation, shall be fixed by the law and that it may be at the rate of 5 per cent. Primarily it is desirable to avoid multiplying cases where the provisions of bills of exchange shall be considered null; and, further, it is important that as far as possible the drawer, the indorsers, and that the drawee-acceptor, shall know the extent of their obligations. The

adoption of a fixed rate, in case of the silence of the clause, recognizes these considerations.

It is natural, in the absence of a contrary stipulation, to let the interest run from the day of the issue of the bill of exchange.

*Article 5.—Differences relative to the amount.*

This article provides for two different cases in which, in consequence of the language of the draft, doubt exists as to its amount. It gives to the questions which present themselves the solutions generally adopted by the laws or by jurisprudence. The central committee has adopted them unanimously.

According to article 5, (a) if the amount is written at the same time in words and in figures the bill shall be valid for the amount written in words; (b) if the amount of the bill of exchange is written several times in words or several times in figures it shall be valid for the smallest sum.

The reasons of these decisions are so clear that it is useless to set them forth. The divergent provisions of the Italian Code of Commerce (art. 291) do not seem practicable. They are contrary to the usages of commerce.

*Article 6.—Penalties attached to the rules relative to the particulars to be set forth in the bill of exchange.*

It is not sufficient merely to indicate the particulars to be inserted in a bill of exchange. It is necessary also to determine the penalties for violation of the provisions of the law in this particular. There is no doubt that in principle the absence of one of the particulars required by the law deprives the document of validity as a bill of exchange. The persons who have affixed their signatures may be legally bound, but the special rules which govern the signers of a bill of exchange are not applicable. This occurs notably when a bill does not contain the designation as a bill of exchange in the countries where it is required or where a bill of exchange does not include either this denomination or the clause to order in other countries.

*Article 7.—Signature given without authority.*

It is generally admitted that the party who affixes his signature to a bill of exchange as representative of another person is himself bound when he has not the authority to represent such person. There is occasion also to assimilate to this case that of a representative who has exceeded his powers.

*Article 7 bis.—Incapacity of a signer.*

All the obligations arising from a bill of exchange are independent of each other. By virtue of this principle the committee decided that the incapacity of one signer should not impair the validity of other signatures. Vide by analogy, article 76. For the same reasons the same rule should apply in the case where the obligation of a signer is void for want of consent owing to fraud, violence, etc.

*Article 8.—Obligations of the drawer—Modifying clauses.*

Article 8 defines, in conformity with the rules of all legislative systems, the different obligations of the drawer. He is guarantor of acceptance and payment at maturity. Can these obligations be avoided by a clause in the bill of exchange? Article 8 distinguishes:

(a) The obligation of guarantee of acceptance may be excluded, for the central committee has authorized the stipulation in a bill of exchange that it shall not be subject to acceptance, which, by depriving the holder of the power of presenting the bill for acceptance, prevents a refusal of acceptance which is the ground for recourse in guarantee against the drawer.

(b) On the contrary, the central committee was unanimous in refusing to admit that the drawer could relieve himself of guarantee of payment. This is an essential obligation without which it is not conceivable that a bill of exchange should be issued.

*Article 9.—Domiciled bill of exchange—Where made payable—Party called upon to accept or pay in case of need.*

This article authorizes the indication of a party at whose office the bill shall be payable, even in the place of residence of the drawee; also to stipulate that the bill of exchange shall be payable in a place other than that on which it is drawn and to designate a party who is to accept or pay in case of need.

*Articles 10–12.—Bills in sets.*

It is rare that bills of exchange payable in the country of their issue are drawn in sets. On the contrary, drafts in sets are frequent for bills of exchange drawn upon distant countries, especially beyond sea. A uniform law which is destined to apply to bills of exchange drawn from one country upon another should, therefore, deal with drafts in sets. It is these cases which are dealt with by articles 10 and 12.

It goes without saying that the drawer may himself issue a bill of exchange in a set. But can the purchaser require a set of drafts from the drawer? By article 10 this question is resolved affirmatively. The need which the purchaser may have of a number of drafts explains why this right is accorded to him. It is equitable, however, that the expense connected with the delivery of these drafts shall be at his charge.

Article 9 only reproduces the rules admitted in all systems of legislation in requiring that the different drafts shall be identical and that each shall be numbered in the text of the document. In default of such a numbering, the different drafts are to be considered as constituting so many distinct bills of exchange.

The creation of several drafts has for its object to avoid the inconveniences which might result from the loss of a single draft. It is necessary to provide, therefore, that payment made upon one draft discharges the obligation and annuls the others. Thus it ought to be, without the necessity of any special clause. But this solution is naturally without force when one of the drafts has been accepted. The entire effect of the bill of exchange is then found concentrated

in this draft and the acceptor can not escape the obligation of paying the holder, even when he has already made payment on a draft not clothed with his acceptance. All these solutions are sanctioned by article 11. It indicates also (art. 11, pars. 3 and 4) the situation of the person who has indorsed all the drafts to the same holder and that of the person who has fraudulently indorsed several drafts to different persons.

Finally, article 10, last paragraph, confers on every holder the right to require the delivery of several drafts and indicates what measures to take to obtain them.

It happens often, when there are several drafts of a bill of exchange, that one of them is sent to the drawee for acceptance while the other is negotiated. It devolves upon the holder to obtain possession of the draft presented for acceptance and which has been accepted. Moreover, the person who has sent a draft for acceptance should indicate upon the other drafts the name of the party with whom this first draft may be found. The latter should deliver it to the holder of the other drafts when he claims it. If he refuses to deliver it the holder shall have the right to have this refusal established by a protest. But it is not proved, even by this step, that the draft has not been accepted or paid. Moreover, no recourse is admitted against the indorsers or against the drawer so long as it has not been established by a protest that acceptance or payment has not been obtained on another draft of the same set.

#### *Article 13.—Copies.*

A holder may find it advantageous to make copies of a bill of exchange, especially when it has not yet been accepted. This right is given to him by article 13. As a matter of course, copies should reproduce exactly the bill of exchange, with all the particulars which are found on its face and on its back. To avoid errors or fraud, the copy should set forth how far it goes as a copy—"To here a copy."

Nothing should prevent a copy from being indorsed like an original, and indorsement of a copy should have the same effects as indorsement of the original.

The party to whom a copy has been indorsed has the greatest interest in obtaining delivery of the original, for he can not require payment upon a copy. Otherwise the drawee would be exposed to the obligation of paying a second time to the holder of the original draft. The copy therefore should state who is the holder of the original draft; but the absence of this statement should not impair the validity of the indorsements made upon the copy. It should only give to the person who has suffered a loss through this oversight the right to claim damages from the party who made the copy without this statement.

When this statement has been regularly made, the legitimate holder of the copy to whom delivery of the original is refused by the party who holds it can not take recourse against the indorsers of the copy before having established by a protest the refusal of delivery of the original. The holder of the copy may, according to circumstances, be indemnified by the custodian for the loss which he has suffered.

## CHAPTER II.—OF INDORSEMENT.

The subject of indorsement is of capital importance. In the first place, it is certain that, even if bills of exchange to bearer and bills not to order are admitted, as is proposed by the central committee, these bills will be exceptional. Moreover, bills of exchange render all the services which are expected from them only when they are indorsed. Thus the resolutions of the central committee relative to indorsement are comprehended in not less than nine articles containing various provisions. These deal with the forms of indorsement, different species of indorsement, their effects, and the clauses which may modify them. The resolutions distinguish indorsement transferring ownership, indorsement by power of attorney, and indorsement in the nature of a pledge. The indorsement transferring ownership must be written on the bill of exchange, on an extension, or on the back of a copy. It must be signed by the indorser. It may consist simply of the signature of the indorser. Article 14, of the resolutions, which sanctions this rule, rejected the formalist system still embodied in some systems of legislation (especially in the French Code of Commerce), according to which the indorsement must contain certain particulars fixed by the law, and the absence of one of which particulars makes the indorsement valid only as a power of attorney. This system sometimes results in consequences contrary to the intent of the parties.

The question whether there is occasion to admit indorsement to bearer has been discussed. It would be thus expressed, "Pay to bearer." The majority has concluded that this indorsement should be prohibited. It would transform definitely into a document to bearer a document which the drawer had created as a document to order. This would be contrary to the rule according to which the original form of an instrument of credit, and consequently its mode of transmission, can not be changed. Undoubtedly indorsement in blank is permitted, but such an indorsement does not modify the nature of the instrument, because indorsement in blank may be converted into complete indorsement if the blank is filled up.

It has been proposed to admit that an indorsement to bearer should be valid only as an indorsement in blank, but this proposition has been rejected, for there would not exist in this indorsement a blank to fill out, and if the reference to bearer was canceled to permit a specific indorsement the bill of exchange would fall under suspicion and would circulate with difficulty.

Indorsement made for a part of the amount of a bill of exchange should be prohibited and declared null. Any condition added to the indorsement is also considered void (art. 14).

No restriction is imposed as to the persons to whom indorsement may be made. It may therefore be made even to a person liable by virtue of the bill of exchange. The liabilities resulting from this are not thereby extinguished. The parties obligated, to whom an indorsement has been made, are at liberty to indorse the draft anew (art. 14, last paragraph).

The effects of indorsement transferring ownership are indicated in article 15. Upon this point the central committee has only adopted the rules embodied in all laws. Indorsement transmits to the holder



the rights attached to the bill of exchange; the indorser is guarantor of acceptance and of payment at maturity; a stipulation may, however, exclude these obligations.

Among the rights transmitted to the holder by indorsement, is it necessary to include the pledge which guarantees the payment of the bill of exchange? It has been insisted that the uniform law answered this question in the affirmative, as in several countries is already the case. There is a formal provision to this effect in the French law on maritime mortgages (law of Dec. 10, 1874, art. 12). The majority, however, have thought that this is a question which relates to the régime of mortgages and pledges and that, in consequence, the solution should be left to the national laws on these subjects.

To the effects of indorsement transferring title is related an important question—that of determining what exceptions persons obligated by virtue of the bill of exchange may or may not set up against the holder. The central committee has unanimously decided that the only defenses which may be thus set up against the holder should be those which the law itself sets forth. In article 16 of the resolutions these defenses are enumerated strictly. It follows from this enumeration that, according to the rule universally admitted, defenses which may be set up against preceding indorsers can not, in principle, be invoked against the holder. But it is indicated by article 16, in conformity with the general doctrine, that in case of bad faith on the part of the holder he shall be obliged to submit to the defenses which might have been set up against the preceding holder. To the jurisprudence of each country it belongs to determine what is to be understood in this case by bad faith.

Although the number of defenses which may be set up against the holder may be restricted, abuses are possible. It is conceivable that a drawee, in order to dispense with making immediate payment, may set up a defense which is ill founded. The laws of several countries have sought to avoid these abuses. They employ for this purpose one of the two following means. In the one case, like the German Code of Civil Procedure, they indicate the only methods of proof of defenses which are admitted in the special procedure pertaining to the bill of exchange as regulated by this code. In the others, as under the Scandinavian law, it is held that when certain defenses are set up against the holder the party who invokes them must nevertheless pay, reserving to himself the right to sue to recover on the merit of his claim. It is essential that the national laws should sanction these special rules.

Indorsement in blank is much employed in many countries. Article 17 expressly permits it and indicates the different uses, in conformity with rules universally adopted, which may be made by the holder of a bill of exchange clothed with an indorsement in blank.

An indorsement may contain clauses which are not found in the bill of exchange itself. These clauses should have effect only with regard to the indorser who has inserted them in his indorsement (art. 18, last paragraph).

Mention is made in article 18 of those clauses which are most used. Thus an indorser may indicate a person to accept or to pay in case of need; he may stipulate that he shall not be guarantor of acceptance

or of payment; an indorsement may forbid the holder to indorse the bill of exchange anew; and an indorsement may contain the clause "return without costs."

*Article 19.—Indorsement for collection.*

An indorsement does not necessarily transmit ownership. It often happens that an indorser intends to give authority to the bearer only to collect the amount of the draft. In order that it may be thus, it is necessary that the indorsement indicate that it is made only as a power of attorney, without its being necessary to employ specified expressions. In default of any indication on this point, it is only between the parties (indorser and holder) that it is permissible to prove that the indorsement is valid only as power of attorney. Such a proof is inadmissible against a third party who may not know the nature of the relations which existed between the indorser and the holder. The party who is the holder by virtue of an indorsement made by way of agency may exercise, in the name of the indorser, all the rights arising from the bill of exchange. But, as he is not the owner of the document, he can make indorsement only by way of agency—not an indorsement transferring ownership. From the point of view of the defenses which may be set up, the rule is simple—the defenses which may be set up against the holder—that is, against the holder under the power of attorney—are those only which could have been set up against the indorser if indorsement by power of attorney had not taken place. There can not, therefore, be set up against the holder defenses arising directly against him.

*Article 20.—Indorsement by way of pledge.*

In some countries, especially in France (art. 91 of the French Code of Commerce), the law permits indorsement by way of pledge, which confers on the holder of a bill of exchange the rights of a mortgage creditor. But in other countries this indorsement is not known. Hence an agreement was not reached at first on the adoption of indorsement by way of pledge in the uniform law. The central committee also had restricted itself to deciding that it should be reserved to the national laws to admit indorsement by way of pledge and to determine its forms and effects. After mature reflection, however, it has been recognized that it was preferable to admit indorsement by way of pledge into the uniform law and to determine the form and effects, while reserving to national laws the privilege not to recognize this special indorsement. This is the object of article 20.

*Article 21.—Indorsement after maturity.*

Indorsement is most frequent prior to maturity; it happens, however, that it is sometimes made after it. No one has proposed in the uniform law to forbid indorsement after maturity. But what shall be its effects? Shall it be admitted that it has only the effects of a cession, regulated by the civil law, or that it has the same effects as an indorsement prior to maturity? The central committee believes that neither of these arbitrary solutions should be adopted. As the

**L**ast holder receives the document sometimes only on the eve or even on the day of maturity, it is proper to leave to him the power to transmit the bill of exchange, with all the effects attached to indorsement prior to maturity, so long as the protest has not been drawn or the delays for protest have not elapsed. But if, on the contrary, the indorsement is made after the protest has already been drawn or when the delays for protest have elapsed, there is occasion to recognize that the indorsement has only the effects of an assignment, especially from the point of view of the defenses which may be set up against him who has become the holder after maturity. It is important that the situation of the drawee, as it was at the time of maturity, shall not be impaired by an indorsement made after the protest or after the expiration of the delays granted for preparing it.

### CHAPTER III.—OF ACCEPTANCE.

#### *Articles 22-23.—Optional or obligatory character of presentment for acceptance.*

All legislative systems agree in recognizing that in principle the holder has the right, but is not obliged, to present a bill of exchange for acceptance by the drawee. But should the law permit the drawer to forbid presentation for acceptance or, on the contrary, to stipulate that it is obligatory? There has been unanimity in favor of permitting the clause declaring presentation for acceptance obligatory. This clause is admitted in all countries. It is useful to the drawer, who wishes to be certain of knowing if he can count upon the drawee to pay.

On the other hand, it is only with difficulty that the clause excluding the power to present the draft for acceptance has been admitted. Some members of the central committee have maintained that this power is of the very essence of the bill of exchange. But it has been observed that in some countries the clause "not subject to acceptance" is widely used, especially for bills of exchange drawn by merchants upon clients whom the drawers desire to humor in sparing them the necessity of accepting a bill of exchange before maturity if they wish to escape the annoyance of seeing a protest drawn against them for default in acceptance. In consideration of these usages it has been admitted that the bill of exchange may contain the stipulation "not subject to acceptance;" but, in order to avoid the frauds to which domiciled letters with this stipulation might give rise, the clause prohibiting presentment for acceptance will be valid only in drafts which are not domiciled. When inserted in a domiciled draft the clause "not subject to acceptance" will be considered invalid.

This clause will be considered invalid also in a bill of exchange drawn at a certain time after sight, since the maturity can not be ascertained without presentment for acceptance. (Vide, art. 47.)

#### *Articles 24-25.—Forms of acceptance.*

An indorser may render obligatory the presentment for acceptance of a bill of exchange which was not so in terms, but he can not discharge the holder from the obligation of presenting it for acceptance when it is stipulated in the bill. (Art. 22, second paragraph.)

The forms of acceptance (art. 24) are those which are admitted generally in existing laws. The committee, governed by the idea that everything which concerns the bill of exchange should be set forth upon it, has decided that acceptance by separate act does not bind the acceptor by virtue of the bill of exchange. Acceptance is an element so important that acceptance on an extension (*allonge*) or a copy should be assimilated to acceptance by separate act. (Art. 24, last paragraph.)

The holder, in presenting the bill of exchange to the drawee, should ask him to accept it as it is. The drawee, therefore, should accept it unconditionally. Partial acceptance is admitted, however, in derogation from this rule, for the benefit of those persons bound to guarantee acceptance and payment (art. 25).

If the drawee disregards the rule and accepts under certain conditions, the holder has the choice either to consider the conditional acceptance as a refusal of acceptance and to exercise, in consequence, the recourse which belongs to him in such a case, or to consider the drawee as bound according to the terms of his acceptance. In all these hypotheses the holder is bound to give notice to his immediate indorser and to the drawer of the restrictions imposed by the drawee upon the acceptance. (Art. 31, par. 3, and art. 65.) The latter have the right to have the bill delivered to them upon taking up the amount. (Art. 69 bis, par. 2.)

It is evident, further, that when the bill of exchange is stipulated to be payable in a place different from that of the residence of the drawee, the drawee should in accepting indicate in the acceptance by whom payment will be made. It goes without saying also that the acceptor has the right to indicate in the place of payment a different address than that indicated in the bill of exchange.

Before accepting the drawee should have the opportunity to verify the state of his account with the drawer or to obtain other information. Hence it is proper that he should not be obliged to decide immediately. It should suffice that he give his response on the first business day which follows presentation for acceptance. (Art. 27, par. 1.)

It would be dangerous sometimes to leave the document in the hands of a drawee who might alter it. Hence, the central committee consider, contrary to the rule now in force in several countries, that the holder should not be obliged to surrender it to him. (Art. 27, par. 2.)

Acceptance is irrevocable. At what precise moment does it become so? It is not admissible that the acceptor should recall it either when, having accepted the bill of exchange, he has advised one of the signers of the bill or the holder or the agent of the holder, or when he has delivered it to the holder or to his agent, the document which has been left with him. The drawee can not cancel his acceptance when one of these two facts has occurred. (Art. 28.)

On the consequences of acceptance there is only a single point of divergence between different laws. They all recognize that by acceptance the acceptor is obligated by virtue of the bill of exchange toward the holder. But they differ upon the point whether the drawee is obligated directly by his acceptance toward the drawer. To the committee it has seemed proper to admit the direct obligation. Thus, in the case where the acceptor does not pay at maturity

the drawer may proceed by virtue of the bill of exchange against him. In some countries the drawer can only proceed against the drawee-acceptor after having paid by invoking the privilege of subrogation to the holder.

It is not necessary to provide only for the case of acceptance. The uniform law must, like the laws of all countries, provide for the case of refusal to accept. Under what conditions is there refusal to accept? Not only when there is an express refusal, but also when the acceptor has canceled his acceptance within a time when he still had the right to do so or when there is an acceptance modifying the particulars of the bill of exchange, if the holder is not satisfied with it. (Art. 30.)

It is important that the refusal to accept should be established in a certain manner, because refusal to accept gives birth to the recourse of the holder against the indorsers and against the drawer. The normal method of establishing refusal to accept is a protest for nonacceptance; but the uniform law should leave to the national laws the power to assimilate to the protest a declaration made by the drawee upon the bill of exchange and signed by him.

In conformity with the laws of all countries, the common law will not fix any period for drawing the protest for nonacceptance. Consequently it may be drawn at any time up to maturity.

When the holder has had drawn a protest for nonacceptance he has the right of recourse against his guarantors individually or collectively. What should he have the right to demand of them? Two chief solutions are admitted by the laws now in force. On the one hand it is provided that the holder may reclaim from his guarantors the immediate reimbursement of the bill of exchange, even though it has not yet matured. On the other hand, it is provided that the holder has only the right to demand a surety or some other guaranty, leaving only to the guarantor the option, if he prefers, of paying the amount of the bill. The central committee has thought proper to accept the first solution. It avoids the contests which might arise upon the point whether the security or other guaranty offered was sufficient. Moreover, it has been established that even in the countries where the holder has not the right to demand immediate reimbursement of the bill, in the majority of cases the indorser or the drawer who are proceeded against do in fact avail themselves of the option of immediate reimbursement.

What, then, may the holder demand from him against whom he proceeds? The general idea which should serve as a guide for answering this question is simple. The holder should be reimbursed, but he ought not to be placed in a position either better or worse than if he had been paid at maturity. The consequences deduced from this principle are set forth in article 32. It is necessary to make the following special observations:

(a) The holder should deduct a discount from the sum which he demands. In the absence of agreement on the amount of this discount, it shall be determined, as the holder may elect, according to the rate of official discount or according to the market rate in the place where the holder of the bill of exchange resides on the date of recourse.

(b) In default of an agreement the holder may demand a commission. It has seemed sufficient to fix this fee at a sixth of 1 per cent



of the amount of the draft, except for a contrary stipulation. (Vide art. 32.)

The indorser who has reimbursed a bill of exchange which has not been accepted has a recourse against the guarantors. The amount of this recourse is fixed, in accordance with the same general idea, by article 33.

If the drawee accepts, the holder has evidently no recourse. But may not events supervene which permit the holder to exercise it, even though acceptance has been given? All legislative systems agree in recognizing that certain events may occur affecting the acceptor, which may have this effect. All admit that one of these is the bankruptcy of the acceptor. The holder has then no longer the guaranty on which he counted, and the suspension of payments, which is the cause of the failure of the acceptor, is established in a definite manner by the judgment declaring the failure.

But should the common law assimilate other cases to the bankruptcy of the acceptor? On this point the opinions expressed have been varied. It has been proposed to leave to national laws the determination of cases assimilated to failure. In view of the diversity of legislation, which admits very different circumstances in connection with insolvency or suspension of payments by the debtor, it is difficult for the uniform law to indicate expressly those cases, other than that of bankruptcy, in which the holder would have, in spite of acceptance, the right of immediate recourse against the guarantors.

But grave objections have been presented to this policy. It has been observed that, as in a certain number of countries bankruptcy is limited to traders, while in others it applies also to nontraders, there would be a certain lack of reciprocity if the failure alone of the acceptor was sufficient under the uniform law to permit the holder to exercise recourse. The provisions have been cited of laws in force, notably those of the German law of exchange and of the Swiss federal code on contracts, which, in addition to the case of the failure of the acceptor, deal with the case where he has suspended payments, even in the absence of avowed failure and with the case where seizure of his goods has occurred. It has been declared by some members that this involves a capital question, and that in all probability the adhesion of their countries would be hard to obtain if only the case of the failure of the acceptor was provided for.

The central committee adopted an intermediate solution. It consists (1) in admitting into the common law the recourse of the holder, apart from the case of failure, in the case of suspension of payments and of the embarrassment (*déconfiture*) of the acceptor,<sup>1</sup> and (2) at the same time, in leaving to national laws the power to assimilate to these cases other cases where the insolvency or the suspension of payments of the drawee is legally established. (Vide art. 35.)

Several members have made reservations upon this solution by remarking that by giving the holder the right of recourse, in cases where the facts upon which the holder bases his claim have not been legally established, the door would be opened to great uncertainty.

<sup>1</sup> In France, what is called a *déconfiture*, is the state of insolvency of a nontrader which is disclosed by the seizure of his goods, by a judgment rendered against him, and which has not been executed, or by other circumstances left to the determination of the judge.

Since the uniform law authorizes partial acceptance, it should determine the mode of such payments and the measures to be taken to permit the holder, in proving partial default in acceptance, to take recourse against the guarantors for the part not accepted. These are the objects of article 34.

#### CHAPTER IV.—OF ACCEPTANCE FOR HONOR.

The resolutions relative to acceptance for honor (arts. 36–39) limit themselves, except upon two points, to giving sanction to the rules admitted in all systems of legislation. One of these points concerns the form of acceptance for honor; the other relates to the rights of the holder toward an intervener.

(a) Many laws require that acceptance for honor shall be made in the protest. It is proposed to provide that it should be necessary, and at the same time shall suffice, that this acceptance shall be set forth upon the bill of exchange. This constitutes a simplification, thanks to which acceptance for honor may take place even for a bill of exchange containing the clause, "return without costs."

(b) In some countries the holder is not allowed to refuse to admit an acceptor for honor if he is solvent. This solution is consistent only with the system which does not permit the holder, in case of a refusal to accept, to demand the immediate reimbursement of the bill of exchange by his guarantors. A solvent acceptor for honor is the equivalent of the security which is all the holder is permitted to demand. But, from the moment that it is recognized that refusal to accept permits the holder to have himself reimbursed immediately by his guarantors, the holder should have the right to refuse an acceptance for honor, for the reason that reimbursement is, or may be, much more advantageous. Such is the reason which justifies recognizing the right of the holder to reject acceptance for honor, even on the part of a referee or of the drawee.

It goes without saying that if the drawer has indicated expressly a referee for acceptance, the holder should present the draft for acceptance (art. 9, par. 2) under penalty of losing his recourse. The holder who admits an acceptance for honor should, nevertheless, give notice of the refusal of acceptance by the drawee to his immediate indorser and to the drawer, in conformity with article 31, paragraph 3, and article 65.

#### CHAPTER V.—OF GUARANTEE (AVAL).

Guaranty, which is a sort of bond by which the party who gives it is considered as obligated by virtue of the bill of exchange, is admitted in all legal systems. In some countries it is much used. The common law, therefore, should admit guarantee and determine its form and effects. It is this which is done by articles 40 and 42.

The common law should admit only the guarantee given on the bill of exchange itself. The guaranty will result from the statement, "for guarantee" (*pour aval*), or any other equivalent followed by the signature of the guarantor. But guarantee will be considered as resulting from the simple signature of a person given on the face of the bill of exchange, except obviously the signature of the drawee,

for the signature of the drawee on the face constitutes acceptance. (Vide arts. 40 and 42.)

In some countries, especially in France, guarantee may be given, not only on the bill of exchange, but by separate document. The central committee has not thought proper to admit this solution. It contends that the uniform law shall adhere to the rule according to which all the obligations resulting from the bill of exchange shall result from statements which are written thereon. But national laws will be permitted to derogate from this principle by admitting guarantee given by separate act.

## CHAPTER VI.—OF MATURITY.

The common law will allow the methods of fixing maturity employed in all countries. (Art. 43.)

It will pass over in silence bills payable at fairs, although they are referred to by some laws. These bills of exchange have in fact disappeared almost everywhere in practice; but as they are still used in some countries, especially in Russia, it will be useful to reserve to national laws the admission of bills of exchange payable at fairs and the fixing of the date of their maturity. (Art. 43.)

Bills of exchange payable at one or at several usances after date or after sight have for some time no longer been drawn. Hence the uniform law will declare that usances are abolished.

It will also indicate, in conformity with the rule admitted into all legal systems except the Anglo-Saxon, that bills of exchange maturing by installments, are void. (Art. 43, last paragraph.)

It happens that bills of exchange often mature on a legal holiday. It is proper to provide that their payment shall be carried over to the next day. This is the rule in almost all countries. In some States special laws have provided that payment shall not be required on certain days which nevertheless are business days. These days are assimilated in this respect to legal holidays. It will be advantageous for the contracting States to engage to communicate to each other the dates of legal holidays and days on which payment can not be demanded in their respective countries.

Legal days of grace are unknown on the Continent, but are admitted in Great Britain. Their admission seems to be contrary to the character of the bill of exchange, which should be paid with rigorous punctuality. The uniform law will exclude legal days of grace. It will even discard the periods of grace which in many countries may be accorded by the judge to the unfortunate but well-meaning debtor for ordinary debts. (Vide art. 45.)

It goes without saying that bills of exchange drawn at sight are payable on presentment. When shall a bill of exchange drawn at a certain time after sight be payable? To settle this question, it is necessary to determine the point of departure of the delay after sight. The uniform law will admit, for fixing the time after sight, only the acceptance duly dated or the protest for nonacceptance. It will, however, leave to national laws the power to decide that the protest may be replaced by a declaration dated and signed by the drawee on the instrument itself, as is provided by the Italian Code of Commerce and the law of Belgium.

The acceptance should indicate the date of presentment to the drawee, and it is this date which will serve as the point of departure for the time after sight. It may happen that the acceptance is not dated. In such a case the drawer will be compelled to draw a protest for lack of the date, and it is from the date of this protest that the time after sight will run.

### *Article 42.*

In the deliberations of the Central Committee, it was maintained that there should be assimilated to acceptance for fixing the delay after sight a visa duly dated, put upon the document by the drawee. This is a practice which is admitted notably in Belgium. The visa does not imply acceptance. The majority, however, concluded that the visa should not be admitted into the uniform law. It was to be feared that the distinction between the acceptance and the simple visa would give rise to difficulties.

Bills of exchange payable at sight or a certain time after sight ought not to be long delayed in presentment for payment or acceptance. Otherwise, the signers remain during too long a period bound by their obligation of guarantee. It is necessary that the uniform law should indicate the maximum of delay in presentment. It seems sufficient to fix it at six months, counting from the date of the issue of the bill of exchange. With the existing facilities for rapid communication, it is useless that the delay be increased because of distance. (Vide art. 48.)

Moreover, it should be permissible to the drawer or to a holder to curtail this delay. Only the drawer, however, should be able to prolong it and he should not be able to do so for more than six months, with the result that the delay in presentment should be at most one year. If a longer delay should be stipulated, it should be reduced to a year. (Vide art. 48.)

It is indispensable that the uniform law should determine the sense of several expressions sometimes employed in bills of exchange to indicate maturity, and shall indicate at what time bills mature which are drawn at one or several months from date. (Vide arts. 50 and 51.) It is important also that there should be inserted in the common law some provisions for resolving the difficulties which arise in fixing maturity because of the existence of different calendars in the place of issue of the bill of exchange and in the place where it is payable. This is done in article 52.

## CHAPTER VII.—OF PAYMENT.

The rules relative to payment have great practical importance, for payment is the ultimate object of the bills of exchange issued. The general rules on the payment of debts are applicable, in principle, to the payment of the bill of exchange, but there ought also to be some special rules applicable to such payment.

Above all, it is necessary to determine when a bill of exchange should be presented for payment. In conformity with the rule admitted in many countries, the holder may present the bill for payment either on the day of maturity or on one of the two business

days which follow. (Vide art. 53, par. 1.) But in some countries, notably in France, the law (Code of Commerce, art. 161) imposes on the holder the obligation of presenting the bill for payment on the day of maturity. This obligation is not, however, enforced by the loss for the holder of the right of recourse against his guarantors (negligence), but only by the pecuniary responsibility of the holder toward those persons who may have suffered prejudice because the draft was not presented for payment on the day of maturity. This pecuniary responsibility becomes effective only when it is established that the drawee who could pay on the day of maturity had suspended payment when, subsequently, the payment of the bill of exchange was demanded of him. In countries where this system is admitted, especially in France, the interested parties hold that it should not be abandoned. It appears to them necessary to assure promptness in the payment of bills of exchange. It will be left to the national laws to admit this system.

The term of the bill of exchange is considered as obligatory upon the holder as well as upon the drawee. Thus, before maturity, the drawee can not be compelled to pay and the holder can not be compelled to receive payment. Payment before maturity has an exceptional character, and the drawee who makes such payment should take time to examine whether he is paying correctly to a holder who is legitimate and competent. The drawee who pays before maturity is responsible, therefore, for the validity of the payment—that is, he is bound to pay a second time if he has paid a person who has not the right to receive payment or who is not competent. On the contrary, at maturity, not only is payment a normal act, but the drawee who does not pay is exposed to a protest. The drawee must then hasten to pay when the bill is presented to him at maturity. It follows that bills of exchange must be paid promptly to the holder, and hence the drawee should not be compelled to verify the signatures of the indorsers. All that may properly be required is that the drawee ascertain if the indorsements follow each other in conformity with law, but he should not be obliged to verify the authenticity of the indorsements. By this fact alone, that the drawee who has paid has taken care to verify the chain of indorsements, he is liberated, even though he has paid to a person other than the legitimate holder. (Vide art. 54.) As to the verification of the identity and the capacity of the holder, it is left to jurisprudence to determine the obligations of the drawee, or, if need be, his responsibility in the matter.

The case where a bill of exchange is payable in a foreign money—that is, in the money of a country other than that having circulation in the place of payment—should be provided for. A distinction in the matter is necessary. If it has been stipulated that the payment shall be made only in a certain foreign money, this stipulation should be observed; but in default of such a stipulation, the drawee should be allowed to pay in the money of the country of the place of payment. The usages of this place should serve then to fix the value of the foreign money in the money of such country. The interested parties, moreover, are free to make such an agreement as seems proper to them in this respect. (Vide art. 56.)

In general, a debtor can not constrain his creditor to receive a partial payment; but in the matter of a bill of exchange, the benefit



accruing from the discharge of the signers makes it imperative that the holder shall not be allowed to refuse a partial payment. (Vide art. 52.) It has been observed, however, by some members, that the admission of partial payment might be the cause of serious complications for holders who, like certain large banks, have to present many bills of exchange on the same day. To meet this practical consideration, it should be reserved to the national laws to decide that partial payment shall be permitted only when it shall be made at the domicile of the holder or, after protest, to the notary or other competent official holding the protested bill.

When a partial payment has taken place, it is necessary that the bill of exchange should bear a statement indicating the amount paid; the holder should be bound to state it on the document. The drawee should also have the right to demand a receipt, in order to retain in his hands proof of his partial settlement.

When the holder does not present himself to receive payment at maturity, the drawee may nevertheless desire to settle. As he may not know in whose hands the bill may be found, it is impossible for him to make a direct offer. The uniform law will lay down only the principle according to which the drawee shall be allowed to deposit the amount of the bill of exchange with competent authority, in such manner that the sum deposited shall be at the risk of the holder. The details of such regulations will depend upon the provisions of the laws of each country. (Vide art. 58.)

#### CHAPTER VIII.—OF PAYMENT FOR HONOR.

The resolutions (arts. 59–62) devoted to payment for honor are limited, with some differences of detail, to the rules most generally admitted by the laws of different countries in regard to persons who may pay for honor, those for whom such payment may be made, the effects of such payment, and the preference to be accorded to the intervenor who will accomplish the greatest number of discharges in case of concurrent offers among several intervenors. There is occasion only to make the following remarks:

(a) That the payment for honor need not be set forth in the protest for default of payment.

(b) That it may take place either after the protest or after maturity, if the draft contains the clause, "return without costs;" or after one of those events has occurred which permit recourse for payment before maturity (refusal to accept, failure of the acceptor, etc.).

(c) That the payment for honor must be of the total amount, which would permit the holder to refuse a partial payment for honor.

(d) That the payer for honor who is subrogated to the rights of him for whom he pays has not, however, the right to indorse anew the bill of exchange. This constitutes an exception to the rule which permits indorsement, even after maturity. It is justified by the object of the payment for honor, which is to extinguish the obligations arising from the bill of exchange for all those persons who have affixed their signatures after that of the party for whom the payment has been made.

## CHAPTER IX.—OF RECOURSE FOR NONPAYMENT.

The eleven articles (arts. 63–73) which form this chapter embody resolutions of great importance and touch on subjects very diverse.

They concern themselves, first, with the steps to be taken by the holder in case of nonpayment by the drawee (arts. 63–65); second, with the rights of the holder who has fulfilled these formalities against his guarantors and with the rights of the indorsers, one against the other and against the drawer (arts. 66–69); third, with the penalties incurred by the negligent holder (arts. 70 and 71); fourth, with the consequences of the *vis major* which prevents the holder from presenting the bill for payment or from fulfilling the formalities destined to establish default of payment within the proper time (art. 72); fifth, with the clause, “return without costs” (art. 73).

The majority of the questions dealt with in this chapter have been the occasions of long discussions in the central committee, for it is far from likely that they should be settled in the same manner in all legal systems.

1. Formalities to be fulfilled by the holder in case of default of payment (Arts. 63–65.)

As a matter of principle, nonpayment should be established by a legal document, which is the protest for nonpayment.

The possibility of drawing protest on the day of maturity has been discarded. This day should belong, according to the general principles of law, entirely to the debtor. But the holder has the two business days which follow that of maturity to have the protest drawn. The provisions of some laws, which require the preparation of the protest on the morrow of maturity, have been found too rigorous.

It is to the law of the country where the draft is payable that it belongs to regulate the forms of protest, the particulars to be inserted, and the persons invested with the power of drawing it. The uniform law should not admit that protest for nonpayment may be replaced by any other formality. The central committee has thought proper, however, to leave to the law of the country where the bill of exchange may be payable the power to decide that the protest may be replaced by a declaration written by the drawee, signed by him and recorded within a given time.

It is essential that the indorsers and the drawer should be advised promptly of the default of payment. In order that this may be done, the holder should give notice of it within a very short time to his immediate indorser. The latter should in his turn communicate to his indorser the notice which he has received, and thus in order up to the drawer.

But if the indorsers are numerous the drawer would, if the notices under discussion sufficed, be advised only after a long delay. The drawer is, however, the person who has the greatest interest in knowing of the default of payment by the drawee. Hence the holder is under obligation to give notice of the nonpayment directly to the drawer. For this purpose a delay of four days is accorded to him. As there are countries where it is the public officer charged with drawing the protest upon whom is imposed the obligation to advise the

drawer of the default of payment, care has been taken to reserve to national laws the power to preserve or to permit this rule.

These successive notices will not be expensive, since they can be given by registered letters, or even by an ordinary letter where delivered directly to the person advised, who should give a receipt for it.

Absence or delay of notice has no other penalty than the obligation for the person who is negligent to repair the prejudice which he has caused. This system, which has been adopted in its general features for a considerable time in the Netherlands, Germany, Austria, Switzerland, and the Scandinavian countries, is more simple, less costly, and less rigorous than that by which the holder who has not been paid is bound, under the penalty of disabilities, to communicate the protest to the warrantor against whom he wishes to take recourse, and to bring the matter into court within a brief period of delay, which in France is, in principle, only a fortnight.

## 2. Rights of the diligent holder.

The holder who has had protest drawn within the legal time has different rights: (a) The right of action against the guarantors for reimbursement; (b) The right to draw upon one of them a new bill of exchange at sight (redraft). These rights belong also to the indorsers against each other and against the drawer.

### (a) Recourse of the holder.

The different signers of the document being jointly bound, the holder may take action against anyone among them or against them collectively. He is not bound to observe any fixed order. He may take action against any other indorser than the one who precedes him, or against the drawer. Moreover, if such action remains without result, he has the right to proceed against other obligees, even subsequent to the one whom he has first sued.

The object of the recourse of the holder is determined by article 67. It is necessary that the holder should be put in the same situation as if he had received payment from the drawee. It is this which explains why he may recover the amount of the bill of exchange, with interest and costs.

The indorser who has paid the holder, having a right of recourse against his guarantors, the object of such recourse is determined by article 68.

### (b) Redraft.

The holder may, in the absence of stipulation to the contrary, obtain reimbursement by drawing a bill of exchange at sight upon one of the guarantors. This is what is called a redraft. It is determined by article 69, which defines the rights of the holder, of what elements the amount of the redraft shall be made up. It is indicated also how the amount of redrafts shall be determined which indorsers draw upon each other or upon the drawer. The right, however, of interested parties to draw redrafts is not an essential one. It may be suppressed by a clause in the bill of exchange.

## 3. Disabilities incurred by the negligent holder.

According to the rigorous rules of the bill of exchange, the negligent holder—that is, he who has not fulfilled within the legal time the

obligations which the law imposes upon him—incur certain disabilities; he is deprived of his rights against his guarantors.

Article 70 indicates the cases in which the holder shall be considered as negligent and deprives him in such cases of his rights against all the signers of the document other than its acceptor and the guarantor of the latter. But there are cases in which it would be unjust to admit the disability of the holder against the drawer. All laws admit this general idea. They reserve, however, to the negligent holder, in the cases with which they deal, the right of action against the drawer by different forms of expression. Thus, the French Code of Commerce permits the negligent holder to proceed against the drawer who has not provided cover, while the German law recognizes the right to proceed against the drawer who would otherwise be unjustly benefited to the prejudice of the holder. It belongs to national laws to determine the cases where the negligent holder may proceed against the drawer and the nature of the action which he may bring.

#### 4. *Vis major*.

It happens sometimes that the holder is prevented from presenting the bill of exchange or from having the protest drawn within the legal time by an insurmountable obstacle constituting what is called, in the language of the law, a case of *vis major*. On this occasion, multiplied and very difficult questions present themselves.

Sometimes, in order to avoid the difficulties of deciding on the point whether there is a case of *vis major*, when a grave event has occurred, having to a certain degree a general character (floods, earthquake, civil war, invasion, etc.), the public powers intervene to determine that the time for protest shall be prolonged or that the maturity shall be extended. Shall these measures necessarily be taken under consideration, which are designated sometimes under the name of moratoria, even outside of the country in which they have occurred? It was the opinion of the central committee that this was a question which the common law should avoid. Considerations foreign to the law might exercise great influence in the solution to be given to it.

But, in the absence of any measure taken by the public powers of a country, it is possible that a case of *vis major* may occur. Should this exercise any influence on the duties of the holder and on the recourse to which he is entitled? In some countries it is admitted, in the absence of any legal provision, that the judges may decide, when they recognize a case of *vis major*, that the holder shall preserve his recourse, even though he has not drawn the protest at a proper date, and that he has the right to wait to exercise it until the *vis major* has ceased. In other countries it is held, either by formal legal provisions (art. 813 of the Swiss Code of Contracts), or by jurisprudence (in Germany), that the obligations and the rights of the holder are not modified by the existence of a case of *vis major*.

The central committee has recognized, even without a discussion on this point, that the latter system is one of excessive rigor. It is admitted that the judge should have the power to recognize a case of *vis major*, and that in consequence the holder should not incur disabilities, even though he has not drawn the protest within the legal time. But this solution creates a grave question: Shall the

holder, when a case of vis major presents itself, take recourse immediately against his guarantors, or shall he, on the contrary, suspend all recourse until the day on which the vis major has ceased?

The opinions of the members of the central committee have been much divided upon this point. Some members have maintained that the recourse should be immediate, others, on the contrary, that there is occasion to permit their suspension until the day when the vis major has ceased. Very strong reasons have been given in favor of each of these two solutions. In favor of the policy of immediate recourse, stress is laid upon the fact that the signers of the bill of exchange have guaranteed payment at maturity, and that with the opposite system the consequences of an event which has affected only a part of the territory of a country are extended to the entire country. It has been said, also, from the standpoint of theory that the suspension of recourse is contrary to two principles which govern the bill of exchange—the joint liability of the parties bound, which permits application to anyone in order to obtain payment, and the independence of the obligations of the different signers of the draft.

But it has been objected, on the other side, that there would be risk of causing great perturbations in the business world by permitting a holder, prevented by a case of vis major from presenting the draft or having the protest drawn within the legal time, to take recourse immediately against his guarantors. These may be very numerous, and the recourse of a holder may have a reaction which will affect a great number of persons domiciled in very different places.

Members of the central committee have felt that in the presence of these conflicting considerations an agreement was possible only by the adoption of a compromise, granting something to each of the two opposite opinions. It is this system, adopted by the central committee, which is found formulated in article 72.

If the case of vis major is not prolonged beyond one month after maturity, recourse is suspended. As soon as the vis major ceases, the holder must present the draft for payment and must have protest drawn. But if the case of vis major persists even beyond one month, recourse may be exercised when the month has elapsed.

It is understood that the interest on the amount of the bill of exchange shall be due to the holder from the date of maturity when, the case of vis major lasting no longer than a month, the holder has been compelled to wait to exercise his recourse.

The judges should have an absolute power of determining whether there has been vis major and during what time it has continued. But the central committee is of the opinion, by a majority, that the common law should provide that the cases of vis major personal to the holder or to his agent, like sickness or compulsory absence, shall not be taken into consideration in such manner that the obligations and the rights of the holder shall be in any way affected by it.

##### 5. The clause, "return without costs."

As the common law will recognize the clause, "return without costs," there is occasion to determine its effects. This is the object of article 73. This clause has the effect necessarily to permit the rights of the holder to subsist, even though he has not had protest drawn within the legal time. Upon this point the same solution is



admitted in all countries. But should it be admitted that if the holder, in spite of this clause, has had protest drawn, the costs shall be at his charge? Upon this point there are divergent solutions in different countries. The committee has provided that the uniform law should, by a reasonable interpretation of the purpose of the interested parties, allow the cost of protest to lie against the holder. At the same time, it permits this solution only in the cases where the clause, "return without costs," is found to have been inserted in the bill of exchange by the drawer. Then, in effect, the protest is not necessary for the preservation of any of the recourses of the holder. On the contrary, when the clause, "return without costs," has been inserted in an indorsement, as it affects only the indorser who has inserted it, the protest is useful to the holder for the preservation of his rights against all other signers. In such a case it is proper that he should be able to recover the costs against all his guarantors.

The clause, "return without costs," does not dispense merely with the protest for nonpayment; it dispenses also with the protest for nonacceptance. But it does not dispense either with the presentation of the draft to the drawee within the legal time nor with notice of nonpayment to be given by the holder to the indorsers and to the drawer.

Some members of the central committee would have preferred that, under the clause, "return without costs," the holder might escape all disabilities and be responsible only for the prejudice caused by his neglect to present the bill of exchange within the legal time. But, by a very large majority, the central committee decided that, in spite of the clause, "return without costs," the disabilities should accrue if the holder did not present the draft for payment within the two business days which follow maturity.

#### CHAPTER X.—OF THE LOSS OF THE BILL OF EXCHANGE, OF FORGERIES, AND OF ALTERATIONS.

These three subjects are treated in articles 74 and 77 of the resolutions.

##### Loss of the bill of exchange.

The right of the party who has lost a bill of exchange to have another draft delivered to him, by following backward the chain of indorsers, is admitted in all countries. It is confirmed by article 74. This right evidently implies the obligation upon the indorsers to reproduce their indorsements on the new draft.

What may be done by the owner of the lost bill of exchange to obtain payment of the amount? Upon this point legislative systems differ widely. The French Code of Commerce provides that the holder may, through a legal action, obtain payment from the drawee, under the restriction of giving a bond. The rights of the legitimate holder are reserved. The German law and the numerous laws which are based upon it permit a special procedure call *Amortisationsverfahren*, according to which the holder may succeed in having the lost bill of exchange annulled in such a manner that a party who may have the document in his actual possession will no longer have any rights. It would have been desirable to have reached an agreement

on some common rules to be applied; but, after a mature examination, it has been recognized that an understanding upon this point, until the distant future, was impossible. The German system implies the organization of special measures of publicity and the admission of a form of procedure unknown in a great number of countries. Hence a resolution of the central committee has referred to the law of the country where the lost bill of exchange is payable the regulation of the procedure to be followed by the owner who wishes to obtain its payment.

It is important to encourage the circulation of bills of exchange. In order that this may be easy and safe it is necessary that the holder of the bill of exchange should not risk being obliged to deliver it into the hands of a person who may demand it. Thus article 75 admits this demand for a bill of exchange only against a holder who has acquired it in bad faith, or who, in acquiring it from an unlawful holder, has been guilty of gross negligence. The bill of exchange is thus assimilated in a large measure, from this point of view, to a security to bearer, even when, as will always be normally the case, it is payable to order.

It happens sometimes that the signature affixed to a bill of exchange is forged or that the text of the bill is fraudulently altered. In case of the forgery of a signature, it seems proper, in the interest of credit, to admit that the persons who have actually affixed their signatures on the bill of exchange are not less legally liable. (Art. 26.)

When there is an alteration it may have no effect with regard to prior signors, for they may have affixed their signatures while the original text was unaltered. Signors subsequent to the alteration, on the contrary, have by it been led into error. They are liable in conformity with the instrument as altered. (Vide art. 77.)

It has been proposed to decide that the signature should be presumed, in the absence of proof to the contrary, to be subsequent to the alteration; but this would be an arbitrary presumption. The central committee has refused to adopt it and has concluded to leave the question entirely to the consideration of the courts.

## CHAPTER XI.—OF PRESCRIPTION.

All the resolutions of the central committee on the subject of prescription are contained in article 78. The question of the greatest importance which arises is that of knowing if there shall be only one period of prescription for all the parties liable, or different periods for different kinds of obligations. The second solution has been accepted without contest. It is proper that the acceptor, who is the principal party liable, should be bound for a longer time than the others, who are only guarantors. The period of prescription adopted for the acceptor and for the guarantor of the signature of the acceptor is three years, while for other parties liable it is six months.

If the common law should fix the period of prescription, it should not determine the causes of suspension and of interruption, for these must depend in a certain measure on procedure, which varies much with different countries. National laws alone, therefore, are to determine the causes of suspension and the causes of interruption; but the uniform law, in order to avoid any difficulty, will sanction

the rule according to which an act proclaiming interruption of prescription shall have effect only with regard to the party against whom it has been issued and not against all the signers of the bill of exchange. Thus, it will belong to national laws to decide if the prescription shall permit to subsist against certain parties liable other actions than those which, resulting from the bill of exchange, might be extinguished by the prescription.

The central committee has adopted, moreover, a rule entirely new. When a party liable is sued at law, it is of great importance that his guarantors shall be advised of it. This would render possible consultations and would permit also the guarantors thus advised to repurchase the bill of exchange by reimbursing the party in whose hands it might be found. According to article 78, last paragraph, notice must be given by the party who is sued to his immediate indorser; the latter must communicate this notice to his own indorser, thus in succession reaching back to the drawer. Thanks to this notice, there will be no fear that an indorser or the drawer will be surprised by an action brought against them, when the acceptor has been discharged by a prescription of three years.

*Additional provision on cover (article 78 bis).*

From the answers given to the Questionnaire of the Government of the Netherlands, it is evident that it is impossible to reach an agreement on the important questions relating to cover.<sup>1</sup> Among the Governments which made answers, some have declared themselves in favor of the German system; others have declared it would be impossible for them to abandon the French system. The two systems are widely different. According to the German system, the law dealing with the bill of exchange need not concern itself with the "cover," because the bill of exchange stands on its own merit. It is independent of the relations that may exist between the drawer and the drawee, on other matters. Thus the credit balance which constitutes the "cover," remains the property of the drawer, even after the bill of exchange has been drawn and put into circulation. On the contrary, according to the French system, the law dealing with the bill of exchange must concern itself with the "cover," especially to make it incumbent upon the drawer to provide cover at maturity, and to acknowledge that the right to the "cover" is transmitted to the successive indorsers. With this system the holder has the right to proceed against the drawee, even when the bill of exchange has not been accepted; and in case of failure of the drawer before maturity, the holder has a claim against the drawee prior to the creditors of the drawer, by making valid against the drawee the inherent rights to the credit balance which constitutes the "cover." The French delegates have especially declared that the interested parties are satisfied with the latter system, and ask that it be not sacrificed to the wish, ever so praiseworthy, to reach a unification of the law.

In the face of such formal statements, the central committee was bound to acknowledge that it was proper to leave the different ques-

<sup>1</sup> The impossibility of such an agreement had already been disclosed by the deliberations of the congresses of Antwerp and of Brussels in 1885 and 1888.

tions relating to cover to be regulated by the national laws. Such is the object of the additional article (78 bis). This reservation explains why the resolutions contain no provisions relating to "cover."<sup>1</sup>

## CHAPTER XII.—OF THE PROMISSORY NOTE TO ORDER.

The declarations to be inserted in a promissory note to order are substantially the same as those which should appear in the bill of exchange. Especially in the countries where the instrument must be designated as a bill of exchange, the designation of the instrument ought to be found also in a promissory note, in order to make it a note regulated by the special laws applicable to the promissory note to order. The common law will lay down the general principles by which the rules relative to the bill of exchange shall, saving certain exceptions, be applied to the promissory note. These exceptions relate almost entirely to the fact that in the promissory note there is no drawee; the subscriber must be treated as is the acceptor in the case of a bill of exchange.

To the resolutions formulated in 80 articles are added 2 resolutions of a general order and a single resolution of a special character.

### GENERAL RESOLUTIONS.

To avoid any error, it is proper to declare that the uniform law does not apply to bills to bearer and to checks.

In regard to checks, a special conference at a later date will be able to consider if there is occasion to prepare a uniform law and to formulate its provisions. This question will arise without doubt within a short time, for in many countries, although it is not admitted, as is done by the English law of 1882, that the check is a bill of exchange at sight drawn upon a banker, a large number of the rules which govern bills of exchange apply to checks, in such a manner that in these countries the rules of the uniform law on bills of exchange will regulate checks. But among these rules there are some which are not applicable to checks.

### SPECIAL RESOLUTIONS.

Bills of exchange are everywhere submitted to a stamp tax, but laws differ as to the penalty. Some limit themselves to imposing a penalty against the violators; others pronounce the invalidity of bills of exchange not stamped, or impose disability by depriving of some of his rights the holder of a bill of exchange not stamped or having insufficient stamps.

These last penalties are excessive. They have the unfortunate effect of making it advantageous to the parties to avail themselves of a fiscal violation in order to escape their obligations. They give rise also to difficulties of an international character.<sup>2</sup> Hence the

<sup>1</sup> There is nothing extraordinary in the fact that a law does not contain uniform rules on the subject of "cover." Thus the English law of 1882 (bills of exchange act), which applies to England, Scotland, and Ireland, reserves for Scotland alone the rules relating to the exclusive right of the holder over the cover.

<sup>2</sup> This concerns the question whether the nullity of a bill of exchange for lack of stamp, provided for in the country of the issue of the document, should be recognized in other countries.

committee considers that fiscal provisions concerning the bill of exchange and the promissory note should be enforced neither by the invalidity of the instrument nor by disabilities. The penalties of the fiscal laws relative to the promissory note and the bill of exchange should have no place in the uniform law. It will be for the committee on private international law to consider if a provision touching this point should be inserted into the project of a convention which this committee is preparing.

Thus are discussed, very incompletely and imperfectly no doubt, the resolutions of the central committee. These resolutions appear to be of a nature to be brought to the attention of the several Governments. With some exceptions, which are not numerous, the rules adopted by the committee are not entirely novel; they are borrowed from laws already in force, which have been tested by experience or they have adopted legal solutions which have already been sanctioned by the decisions of the courts. On some points, of which several are of great importance, as in those which concern the particulars required in the bill of exchange, reservations have been made in favor of provision by national laws. Thanks to these reservations, no State is called upon to sacrifice those principles of its legislation which the interested parties consider as essential. It has been particularly understood that each country may preserve intact the system adopted by its laws and jurisprudence concerning the rights recognized in the holder on the subject of cover. (Art. 78 bis.)

It may, therefore, be hoped that the resolutions of the committee, after their adoption by the conference, will be taken into serious consideration in all countries. Thus once more will have been concluded at The Hague one of those international conventions, happily becoming more and more frequent, which, in promoting closer relations between nations, contribute to assure the peace of the world.



## VI. RESOLUTIONS OF THE CENTRAL COMMITTEE.

### CHAPTER I.—OF THE ISSUE AND FORM OF THE BILL OF EXCHANGE.

#### *Article 1.*

A bill of exchange must contain:

1. Designation as a bill of exchange. This designation must be written in the body of the instrument and expressed in the national language of such instrument;
2. An unconditional order to pay a sum certain;
3. The name of the party who is to pay;
4. Indication of the date of maturity;
5. Indication of the place where payment is to be made;
6. The name of the party to whom payment should be made.
7. The indication of the place where the bill is drawn and the date of drawing.
8. The signature of the drawer.

It is reserved, nevertheless, to national laws to decide that the clause "to order" shall be sufficient to give to a document the character of a bill of exchange even when it does not contain such designation.

The bill of exchange may be drawn from one place upon another or from one place upon the same place. It is not necessary that it specify that value has been given.

#### *Article 2.*

Every bill of exchange, even if it is not expressly drawn to order, is transmissible by indorsement, except in the cases prescribed by article 3.

It may be to the order of the drawer himself.

It may be drawn upon the drawer himself, in which case it shall be considered as a promissory note to order and shall not be made to the order of the drawer himself.

It may be drawn for account of a third party.

#### *Article 3.*

The bill of exchange may be made payable to bearer. It is reserved, nevertheless, to each contracting State to prohibit this form of document for bills of exchange drawn, guaranteed, accepted, or payable within its own territory, whether such bills are at sight or not.

The drawer may forbid the transfer of the bill of exchange by inserting therein the words "not to order" or any equivalent expression. In this case the bill is transferable only with the formalities and with the ordinary effects of an assignment.

*Article 4.*

In a bill of exchange payable at sight or at a certain time after sight, it may be stipulated by the drawer that the amount shall bear interest. Stipulation for interest in any other bill of exchange shall be considered null.

The rate of interest shall be indicated; in default of such indication the rate shall be 5 per cent.

Interest shall run from the date of the bill of exchange in the absence of a stipulation to the contrary.

*Article 5.*

If the amount of a bill of exchange is expressed in a different manner in words and in figures, it shall be valid for the sum written in words.

If the amount of the bill is expressed more than once either in words or figures, it shall be valid in case of conflict for the smallest sum.

*Article 6.*

An instrument in which one of the particulars indicated in article 1 is lacking does not constitute a bill of exchange except in the cases set forth in the following paragraph:

A bill of exchange of which the maturity is not indicated shall be deemed to be payable at sight; a bill without indication of the place of payment shall be deemed to be payable at the residence of the drawee, provided that this residence is indicated expressly in the bill or can be determined with certainty from the text itself. A bill of exchange without indication of the place where it is drawn shall be deemed to have been signed in the place of residence of the drawer under like conditions.

*Article 7.*

Whoever places his signature on a bill of exchange as representative of another person shall be himself liable on the bill when he has not the right to represent said person or when he has exceeded his powers.

*Article 7 bis.*

If a bill of exchange bears the signatures of parties not having the capacity to contract, this fact shall not affect the validity of the obligations of other signers.

*Article 8.*

The drawer guarantees acceptance and payment of the bill.

Any stipulation by which he exempts himself from guaranty of payment shall be considered null.

*Article 9.*

A bill of exchange may be made payable at the residence of a third party in the place of residence of the drawee. It may also be made payable at some other place.

It may indicate a party who shall pay in case of need. The drawer may also indicate expressly a party who is to accept in case of need.

*Article 10.*

The drawer must deliver to the purchaser, upon his demand, several duplicates of the bill, the cost being at the charge of the purchaser. The duplicates should be identical and each should be numbered in the body of the instrument, in default of which each part will be deemed to be a distinct bill of exchange.

*Article 11.*

Payment made upon one part of a set shall be conclusive and shall nullify other drafts which are not accepted. It is not necessary that it be stipulated that payment when made on one part nullifies the effect of the others.

Recourse can be exercised against the indorser who has transmitted different drafts to the same person only by means of the delivery of all the drafts, unless the holder gives indemnity against the loss of recourse of such indorser against preceding indorsers and the drawer.

The indorser, on the other hand, who has transferred parts to different persons, and all subsequent indorsers, shall be liable upon all the parts which have not been restored to him at the time of payment.

Any holder may require the delivery of several drafts. With this object, the holder may address the preceding indorser, who is bound to lend his name and assistance toward his own indorser, and thus in succession from one indorser to another back to the drawer. The indorsers shall be bound to reproduce their indorsements on the new drafts. The expenses involved in the delivery of drafts shall be at the charge of the holder who has demanded them.

*Article 12.*

When a part of a set has been sent for acceptance, the person who has sent it must indicate on the other parts the name of the party with whom this part may be found. The latter is bound to deliver said part to the lawful holder of another part.

If he refuses to do so, the holder shall not be able to exercise recourse before having established by protest that the part sent for acceptance has not been delivered to him and that acceptance or payment can not be obtained upon another part.

*Article 13.*

Any holder of a bill of exchange is authorized to make copies of it. A copy must reproduce the original exactly, including indorsements and all other declarations which appear thereon, and should set forth how far it extends as a copy.

It may be indorsed in the same manner and with the same effects as the original.

The copy must specify the actual holder of the original document.

If this actual holder refuses to deliver it to the lawful holder of the copy, the latter shall not be able to exercise recourse against the

persons who have indorsed the copy before having certified by a protest that the original has not been delivered to him, without prejudice to an action for damages, if there is occasion for it, against the party who has wrongfully retained the bill.

## CHAPTER II.—OF INDORSEMENT.

### *Article 14.*

The indorsement must be written upon the bill of exchange or on a sheet attached thereto (allonge), or on a copy. It must be signed by the indorser.

Indorsement shall be valid, although the person to whom the bill is indorsed is not named or although the indorser has confined himself to placing his signature on the back of the bill of exchange, or on an allonge, or on the back of a copy (indorsement in blank).

The indorsement of a bill of exchange to bearer shall operate only as guarantee (aval) of the signature of the drawer.

On any other bill of exchange indorsement to bearer shall be invalid.

Partial indorsement shall also be invalid.

Any condition added to an indorsement shall be considered null.

A bill may be indorsed to the drawee, whether he is acceptor or not, to a previous indorser, or to the drawer, and such parties may give it a new indorsement.

### *Article 15.*

Indorsement shall transfer to the holder all the rights arising from the bill of exchange.

The indorser, in the absence of a contrary stipulation, is guarantor of acceptance and of payment.

### *Article 16.*

The parties liable on a bill of exchange can set up against the holder only:

1. The defenses which they have directly against the holder.
2. The defenses arising from the text of the bill.
3. The defenses founded on the provisions of the uniform law or on a special provision of the natural law (to which they are remitted).
4. The defenses based upon the incapacity of the signer.

In case of bad faith of the holder, the parties liable may set up against him the defenses of which they would have been able to avail themselves against the preceding holder.

The methods of proof of the defenses which may be set up against a holder shall be determined by national laws.

To the same laws it shall be left to determine that certain pleas set up against the holder by the parties liable shall not dispense them from making payment, but shall permit them only to act against the holder by way of action in restitution.

*Article 17 (bis.).*

If the indorsement is in blank, the holder may:

1. Fill up the blank with his own name.
2. Fill up the blank with the name of another person.
3. Transfer the bill to a third party without indorsing it and without filling up the blank.
4. Again indorse it in blank or in the name of another person.

*Article 17 (bis.).*

The holder of an indorsed bill of exchange shall be deemed to be its lawful owner, provided that he proves his ownership by an uninterrupted succession of indorsements, even though the last indorsement be in blank.

When an indorsement in blank is followed by another indorsement, the person who has placed this last indorsement on the bill is presumed to have acquired the bill under an indorsement in blank.

*Article 18.*

The indorsement may indicate a party who is to pay in case of need.

It may be given without guarantee of payment, unless the indorser is himself the drawer (bill of exchange drawn to order of the drawer).

It may prohibit the holder from further indorsing the bill. In this case, the indorser is not a guarantor to those parties to whom the bill may be transferred.

It may contain the stipulation, "retour sans frais" (return without costs).

Stipulations inserted in an indorsement shall affect only the indorser who inserts them.

*Article 19.*

When the indorsement contains the stipulation "for collection," "by power of attorney," or any other stipulation implying agency, the holder shall be deemed to be the agent of the indorser.

The holder may exercise all the rights arising from the bill of exchange, but shall be able to indorse it only as agent.

The parties liable shall be able to set up against the holder only the defenses which could be set up against the indorser if indorsement by agency had not taken place.

*Article 20.*

When the indorsement contains the stipulation, "value as security," "value as pledge," or any other words implying a deposit of securities, the holder shall be deemed to be a pledge-creditor.

He may exercise all rights arising from the bill, but he shall not indorse the latter, except by way of agency.



The parties liable can set up against this holder only the defenses which they could have set up against the party who indorsed the bill by way of pledge, except in the case of bad faith.

It is left to national laws to provide for indorsement by pledge and to determine its forms and effects.

### *Article 21.*

Indorsement subsequent to maturity shall produce the same effects as prior indorsement. Nevertheless, if this indorsement has been given only after the protest for nonpayment, or after the expiration of the time fixed by law for drawing it, it shall have only the effects of an ordinary assignment subject to the civil law.

## CHAPTER III.—OF ACCEPTANCE.

### *Article 22.*

The holder shall have until maturity the power to present the bill of exchange to the drawee for acceptance. Such presentment may be made by any actual custodian of the document.

Presentment shall be made at the residence of the drawee. The place indicated in connection with the name of the drawee shall be considered as such residence.

Acceptance can be demanded only on a business day.

### *Article 23.*

It may be stipulated in any bill of exchange that presentment for acceptance shall be obligatory or that it shall take place within a certain time. In the latter case, if the last day of presentment is a legal holiday, presentment may be made on the first business day following.

It may be stipulated in any bill of exchange that presentment for acceptance shall not take place before a certain day, but an absolute prohibition to present a bill of exchange for acceptance shall be allowed only in the case of bills of exchange not domiciled.

An indorser may insert in his indorsement a clause rendering presentment for acceptance obligatory upon the holder. On the contrary, an indorser shall not have power to insert in an indorsement a clause against acceptance when the bill was previously subject to acceptance.

A stipulation forbidding presentment for acceptance of a bill at a certain time after sight shall not be allowed.

All stipulations prohibited by the provisions of this article shall be considered null.

### *Article 24.*

The acceptance must be made in writing on the bill of exchange itself. It may be expressed by the word "accepted," or any other equivalent word, followed by the signature of the drawee. The mere signature of the drawee placed on the face of the bill shall constitute acceptance.

An acceptance need not be dated. It must, however, indicate the date of presentment in the case of a bill payable at a certain time after sight.

Acceptance given on an "allonge," on a copy, or by separate document shall not be deemed to bind the drawee by virtue of the bill of exchange.

*Article 25.*

Acceptance must be absolute and unqualified, but may be restricted as to the amount accepted.

Any other modification of the terms of the bill introduced into the acceptance may be considered by the holder as equivalent to a refusal to accept. The acceptor, however, shall be bound according to the terms of his acceptance.

*Article 26.*

When the drawer has indicated in a bill of exchange a place of payment other than the residence of the drawee without designating the person who is to pay for the drawee, the acceptor shall indicate in the acceptance by whom the payment is to be made. In default of such an indication the payment shall be made at the residence of the acceptor.

If the bill is payable at the residence of the drawee, the latter may indicate in the acceptance a different address at the place of payment than that which is set forth in the bill.

*Article 27.*

When a bill of exchange is presented for acceptance to the drawee, he shall give his reply on the first business day which follows presentment.

The holder is not bound to leave the bill in the hands of the drawee.

*Article 28.*

By acceptance, the drawee obligates himself to pay the bill of exchange at maturity to the lawful holder.

In default of payment the holder has a right of direct action against the acceptor upon the bill of exchange.

*Article 29.*

The drawee who has placed his acceptance on a bill of exchange can not cancel it if he has given notice in writing to the holder, his agent, or to any other person who has signed the bill that he has accepted or if he has given up the instrument.

*Article 30.*

The drawee is deemed to have refused acceptance, apart from the case of express refusal, when he has not affixed his acceptance upon the bill on the first business day following its presentment, when he

has canceled the acceptance at a time when he still had the right to do so (art. 28), or when, in accepting, he has modified the provisions of the bill.

*Article 31.*

Refusal to accept shall be verified by a protest.

The protest for nonacceptance may, by virtue of the provisions of national law, be replaced by a declaration duly recorded and signed by the drawee upon the bill of exchange.

Notice of refusal of acceptance must be given by the holder to the next preceding indorser within two days of such refusal. This indorser must give notice to the preceding indorser, and thus, in succession, reaching back to the drawer. Such notices shall be subject to the provisions of article 65.

*Article 32.*

The holder who has had drawn a protest for nonacceptance shall have the right of recourse against the indorsers, against the drawer, and against other signers, individually and collectively.

The holder may recover:

1. The amount of the bill of exchange, with the deduction of a discount calculated, at the option of the holder, according to the official rate of discount or according to the rate of discount in the open market on the date of recourse in the place of the domicile of the holder;
2. The costs of the protest and of the notice prescribed by article 31;
3. The expenses of reexchange, if there has been any;
4. A commission of one-sixth of 1 per cent.

*Article 33.*

The indorser who has taken up and paid a bill of exchange may claim from the parties liable to him:

1. The entire sum which he has paid to the holder;
2. Interest on this sum at the rate of 5 per cent, reckoned from the day of the disbursement;
3. The expenses which he has incurred, especially the expenses of reexchange;
4. A commission of one-sixth of 1 per cent.

*Article 34.*

Where recourse is exercised in consequence of a partial acceptance, the party who pays the sum uncovered by acceptance may require that this partial payment shall be set forth on the bill, and that he shall be given a receipt therefor. The holder shall furnish him with a certified copy of the bill and of the protest. As to the recourse which may be exercised by the indorsers against each other and against the drawer, a copy may replace the original of the bill.

*Article 35.*

In case of failure, suspension of payments, or other embarrassment of the acceptor, the same immediate recourse as in case of non-acceptance may be exercised, after the drawing of a protest for non-payment.

It shall be left to national laws to assimilate to the cases set forth in the preceding paragraph other cases in which the insolvency of the acceptor shall be legally established.

The failure of the drawer, even in the case of nonacceptance, shall not give to the holder the right to exercise recourse against the indorsers and the drawer.

## CHAPTER IV.—OF ACCEPTANCE FOR HONOR.

*Article 36.*

After protest for nonacceptance, or after mere refusal of acceptance when the bill of exchange is not subject to protest, as well as in the cases provided for in article 35, the bill may, at any time before maturity, be accepted for the honor of the drawer, or one of the indorsers, or any signer.

Acceptance for honor may be made by a third party, even by the drawee who has defaulted in acceptance, or by a person already liable on the bill of exchange.

*Article 37.*

The acceptance for honor shall be set forth on the bill of exchange itself and shall be signed by the acceptor for honor. It shall indicate for whose honor it has been made, and in default of such indication shall be considered as given for honor of the drawer.

An acceptor for honor shall give notice of his intervention to the party for whose honor he has accepted. This notice must be given by registered letter not later than the second business day following the intervention.

The signer of the bill of exchange thus advised of acceptance for honor must himself give notice to the party immediately liable to him not later than the second business day after he has received his notice, and so on back to the drawer.

*Article 38.*

The holder has power to refuse acceptance for honor when given by a referee other than the one who has been expressly indicated to accept by virtue of article 9, paragraph 2, or by the drawee. The holder may then exercise the recourse which belongs to him in the cases provided for in articles 32 and 35.

*Article 39.*

By accepting for honor, the acceptor becomes liable toward indorsers subsequent to the party for whose honor he accepted, and in the same manner. The holder who admits an intervenor loses all

recourse against his guarantors because of refusal of acceptance by the drawee.

The acceptor for honor who pays has recourse against the party for whom he has accepted and against the guarantors of this party.

In spite of acceptance for honor, the party for whom it has been given and the parties liable to him may, on payment of the amount indicated in article 32, require of the holder the surrender of the bill of exchange and of the protest for nonacceptance, if such protest has been made. The party to whom the bill has been so delivered may take recourse immediately against the parties liable to him.

#### CHAPTER V.—OF THE GUARANTEE OF BILLS (AVAL).

##### *Article 40.*

The payment of a bill of exchange may be guaranteed by an aval.

##### *Article 41.*

The guarantee shall be given upon a bill of exchange, upon an attached sheet (*allonge*), or upon a copy.

Such guarantee is created by the declaration, "Good for guarantee" (*bon pour aval*), or any similar declaration, followed by the signature.

It shall be deemed to be created by the simple signature of the giver of the guarantee placed on the face of the bill of exchange, except when the signature of the drawee is concerned (art. 24, par. 1).

The guarantee must indicate on whose behalf it is given. In default of such indication it shall be deemed to be given for the drawer.

The guarantee may be given by a third party or by a signer of the bill of exchange, provided that in the latter case the security of the holder is augmented.

It shall be reserved to national laws to admit guarantee by separate document with the same effects as guarantee given upon the bill itself.

##### *Article 42.*

The giver of a guarantee shall be liable jointly and severally with him whose signature he has guaranteed.

He shall be liable even when the engagement of the party for whom he has given a guarantee shall be invalid for any other cause than a defect of form.

He shall have, when he pays the bill of exchange, the right of recourse against the party whose signature he has guaranteed and against the parties liable to the latter.

#### CHAPTER VI.—OF MATURITY.

##### *Article 43.*

A bill of exchange may be drawn and payable—

On a fixed date;

At a certain time after date;

At sight;



At a certain time after sight.

It shall be reserved to national laws to permit also bills of exchange payable at a fair rate and to fix the date of their maturity.

Usances are abolished.

Bills of exchange maturing by installments shall be invalid.

*Article 44.*

If the maturity of a bill of exchange shall fall on a legal holiday or a day on which payment can not be demanded, it shall be payable on the first succeeding business day.

The contracting States shall exchange communications as to the legal holidays and the days on which payment can not be required within their respective territories.

*Article 45.*

No day of grace, either legal or judicial, shall be permitted.

*Article 46.*

A bill of exchange payable at sight shall be payable on its presentment.

*Article 47.*

The time after sight shall run from the date of presentment for acceptance, or from that of protest for nonacceptance.

If the acceptance is not dated, the bearer may cause a protest to be drawn, from whose date the time after sight shall begin to run.

*Article 48.*

Bills of exchange payable at sight, or a certain time after sight, must be presented for payment or acceptance within six months from their date, without extension because of distance. This delay may be abridged by the drawer or by an indorser. It shall be extended only by the drawer and for a maximum of six months. If the extension provided for exceeds six months, the total time given for presentment shall be reduced to one year.

*Article 49.*

The time after date and the time after sight shall not include the day from which the time begins to run.

*Article 50.*

The maturity of a bill of exchange drawn at one or more months after date shall take effect on the corresponding date of the month in question. If there is no corresponding date the bill shall be payable on the last day of such month.

*Article 51.*

The expression, "payable at the half-month" (mid-January, mid-February, etc.) shall signify the 15th of the month.

When "8 days" and "15 days" are referred to in the bill of exchange, it is to be construed, not as 1 or 2 weeks, but as 8 or 15 days.

The expression "half-month" shall signify a period of 15 days.

When a bill of exchange is payable at one or more months after sight, plus a half month, the complete months shall first be counted in order to determine the date of maturity.

#### *Article 52.*

When a bill of exchange is payable at a fixed date in a place whose calendar is different from that of the place of issue, the date of maturity shall, unless otherwise stipulated, be that of the calendar of the place of payment.

When a bill of exchange drawn between two places having different calendars shall be payable at a certain time after date, the beginning of this period shall, except for a contrary stipulation, be fixed according to the calendar of the place of issue.

When a bill of exchange shall be payable at a certain time after sight, the time shall be calculated according to the calendar of the place where the presentment has been made.

The provision of paragraph 2 shall apply to the calculation of obligatory delays in the presentment of bills of exchange at sight or at a certain time after sight.

### CHAPTER VII. OF PAYMENT.

#### *Article 53.*

The holder may present the bill of exchange for payment on the day of maturity or either of the two succeeding business days.

It shall be reserved to national laws to impose upon him the obligation to present the bill on the day of maturity. The failure to observe this obligation shall involve no disabilities for the holder, but may give occasion only to a suit for damages.

The drawee is entitled to demand that the bill of exchange which has been paid shall be surrendered to him with the receipt of the holder.

#### *Article 54.*

The holder of a bill of exchange shall not be compelled to receive payment thereof before maturity.

#### *Article 55.*

The drawee who pays a bill of exchange before its maturity shall be responsible for the validity of the payment.

The drawee who pays at maturity shall be validly discharged only if he has verified the regularity of the chain of indorsements which have not been canceled. He shall not be bound to verify the signatures of the indorsers.

#### *Article 56.*

When a bill of exchange is payable in a money not current at the place of payment, the amount may be paid according to its value

at the time of maturity, in the money of the country, unless the drawer has stipulated that it shall be payable in the money therein indicated (stipulation for payment in actual foreign money). The laws and usages of the place of payment shall determine the value of the foreign money, but the drawer may, nevertheless, stipulate for a different method of calculation.

*Article 57.*

The holder shall not refuse partial payment. National laws may, however, reserve to the holder the power to accept partial payment only when it is offered at his domicile or after the drawing of the protest.

In case of partial payment the drawee may demand that it shall be specified on the bill of exchange and that a receipt shall be given to him.

*Article 58.*

In default of presentment of a bill of exchange for payment within the time fixed by article 53, paragraph 1, the acceptor shall be authorized to deposit the amount with the proper authorities at the expense and risk of the holder.

CHAPTER VIII. OF PAYMENT FOR HONOR.

*Article 59.*

Every bill of exchange, either after protest for nonpayment or the signed declaration of the drawee which shall take its place according to national law, or after presentment for payment if the bill is not subject to protest, may be paid by an intervening party for the honor of the drawer, of an indorser, or of any other person liable upon the bill of exchange except the drawee-acceptor.

The same provisions shall apply to the cases where recourse for reimbursement may be exercised by the holder before maturity by virtue of articles 32 and 35.

Payment for honor may be made by any person who can accept for honor in accordance with article 36, paragraph 2.

Payment for honor must be made not later than the last day permitted for the drawing of the protest for nonpayment. In the cases provided for by paragraph 2 of the present article it must be made before maturity.

*Article 60.*

Payment for honor should be certified in writing on the bill of exchange, showing for whose honor it is made. In default of such an indication, the payment shall be deemed as having been made for the honor of the drawer.

If there are several applications for the payment of a bill of exchange for honor the preference shall be given to that which shall accomplish the largest number of discharges.

The bill of exchange and the protest must be surrendered to the person who pays for honor.

*Article 61.*

The payer for honor is subrogated to the rights of the holder against the party for whom he has paid and against all parties liable to such party.

He shall not, however, give to the bill of exchange a new indorsement. Indorsers subsequent to the party for whose honor payment has been made shall be discharged.

*Article 62.*

Payment for honor must include the entire sum which would release him for whom it is made.

The holder may refuse a partial payment for honor.

If he refuses full payment for honor, the parties who would have been discharged by the payment shall cease to be liable.

**CHAPTER IX.—OF THE RECOURSE OF THE HOLDER FOR NONPAYMENT.***Article 63.*

Refusal to pay shall be verified by an authentic document (protest for nonpayment) on one of the two business days which follow that on which the bill of exchange is payable. This document shall not be made on the day on which the bill of exchange is payable, but shall be drawn on one of the two business days which follow that day.<sup>1</sup>

The forms of protest as well as the particulars to be inserted therein shall be regulated by the law of the country where the protest shall be drawn.

It shall be reserved to national laws to permit the protest for nonpayment to be replaced by a declaration written on the bill of exchange, signed by the drawee, and transcribed in a public register within the time fixed for protest.

*Article 64.*

The protest must be made at the residence of the drawee or of the person required to pay, or of the case of need, or of the acceptor for honor.

*Article 65.*

The holder must give notice of dishonor by nonpayment to the indorser who precedes him within the two business days which follow the day for drawing protest or the document which shall take its place, or which follow the presentment in case of the stipulation "return without costs."

Each indorser shall within the like period give notice to the party who precedes him of the notice which he has received by giving him a copy, and thus in succession up to the drawer. The time shall run from the receipt of the preceding notice.

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<sup>1</sup> It is necessary to assimilate to legal holidays the business days during which certain national laws forbid protest to be drawn.

In addition, the holder must, within a period of four business days, give direct notice of nonpayment to the drawer.

These notices shall be given by registered letter.<sup>1</sup> It shall be sufficient that the registered letter shall be mailed within the periods prescribed by the preceding provisions.

For the sending of a registered letter there may be substituted the direct delivery of an ordinary letter, providing that such delivery shall be established by a receipt dated and signed by the addressee. In a case where an indorser has not indicated his address or has signed in an illegible manner, notice must be given to the preceding indorser.

The party who does not give notice within the legal period shall not lose his right of recourse; he shall be responsible for the damage, if any has occurred, caused by his negligence.

It shall be reserved to national laws to intrust to the public officer who has drawn the protest the obligation of giving the drawer direct notice of nonpayment.

#### *Article 66.*

All parties who have signed, accepted, or indorsed a bill of exchange shall be jointly and severally liable to the holder.

The holder of a bill which has been dishonored by nonpayment shall have the right of recourse, individually or collectively, against the indorsers, against the drawer, and against the other signers, without being compelled to observe the order in which they are obligated.

The same right shall belong to any signer who has taken up and paid a bill of exchange against the parties liable to him.

The exercise of recourse against one of the parties liable shall not prevent recourse against other signers, even those subsequent to those first proceeded against.

#### *Article 67.*

The holder who has not been paid may recover from the party against whom he exercises recourse:

1. The amount of the bill of exchange;
2. The interest on this amount counted from maturity, calculated at the rate of 5 per cent;
3. The expenses of the protest, of the notices given by the holder to the preceding indorser and to the drawer, as well as other expenses;
4. The expenses of reexchange, if there have been any;
5. A commission of one-sixth of 1 per cent.

#### *Article 68.*

The indorser who has taken up and paid a bill of exchange has the right to demand from the parties liable to him:

1. The entire sum which he has paid;

<sup>1</sup>In the countries where the postal laws permit, the provisions of the Brazilian law of December 31, 1908, may be availed of. This law provides (Art. 30) that the letter may be presented open at the post office, which having observed that the notice is in the envelope, shall set forth such contents of the registered letter on the postal receipt and on the stub of such receipt. Mr. Asser as early as 1894 recommended the adoption of a system of this character.



2. Interest on said sum, calculated at the rate of 5 per cent, beginning with the day of the payment;
3. The expenses which he has incurred, especially the expenses of reexchange.
4. A commission of one-sixth of 1 per cent.

*Article 69.*

Any party having right of recourse by virtue of article 66, or of articles 32 and 35, may, in the absence of a contrary stipulation inserted in the bill of exchange, recover the amount by means of a new bill of exchange (redraft) undomiciled and drawn at sight upon one of the parties liable.

The redraft shall include, in addition to the sum indicated either in articles 32 and 35, or in articles 67 and 68, the brokerage paid for the negotiation of the redraft and the stamp tax upon it.

If the redraft is drawn by the holder, the amount shall be fixed according to the rates of a bill of exchange at sight, drawn in the place of payment upon the place where the party liable resides. If the redraft is drawn by an indorser, the amount shall be fixed according to the rates for a bill of exchange at sight, drawn in the place where the drawer of the redraft resides upon the place where the party upon whom the redraft is drawn resides.

*Article 69 (bis).*

Any indorser who has taken up and paid a bill of exchange may cancel his own indorsement and those of subsequent indorsers.

Any party liable on the bill subject to recourse as guarantor, may require of the holder the delivery of the dishonored bill and of the protest, upon the payment of the sum which shall be the object of such recourse.

*Article 70.*

After the expiration of the time fixed for the presentment of a bill of exchange at sight or a certain time after sight (art. 48), for protest for nonpayment or the declaration of the drawee which may take its place (art. 63), or after the expiration of the time for presentment for payment in case of the stipulation, "return without costs," the holder of a bill shall lose his rights against the indorsers, against the drawer, and against all other parties liable with the exception of the acceptor and the party who has guaranteed the acceptor by aval.

Such disabilities shall be without prejudice to actions against the drawer, which may be reserved by the national laws.<sup>1</sup>

The holder who has granted to the acceptor an extension of the time of payment shall lose his rights against all other parties liable who have not consented to such extension, if he has not had a protest drawn within two days following the day of maturity fixed by the bill of exchange.

<sup>1</sup> Action against the drawer who has not made provision (French Code of Commerce, article 170; Bereicherungsklage, German exchange law, article 83).

*Article 71.*

In the case of a domiciled bill of exchange failure to make protest where the bill is domiciled shall not deprive the holder of his rights against the acceptor. The holder, whether or not he has had protest drawn where the bill is domiciled, must give notice of default of payment to the acceptor within the limits of time and in the forms prescribed by article 65.

*Article 72.*

When a case of vis major (an insurmountable obstacle to the presentment of a bill or to the drawing of the protest within the legal limit of time) occurs at the place where these acts should be done, the time for doing them shall be extended. The courts shall decide whether there is a case of vis major and shall determine the duration of the extension of these delays according to the circumstances.

The holder shall present the bill for payment and, if necessary, have a protest drawn as soon as the vis major has ceased.

When the obstacle resulting from the vis major continues beyond a period of one month from maturity, the holder may, immediately after the expiration of such month, exercise his rights against the parties liable.

For bills of exchange payable at sight the holder may, in case of vis major, exercise recourse when the vis major has lasted one month from the day on which, if it had not occurred, the holder would have been able to demand payment.

For bills of exchange drawn at a certain time after sight the time after sight shall begin to run, in case of vis major, one month after the day on which, in its absence, the holder would have been able to present the bill for acceptance.

The courts shall not be authorized to consider as constituting cases of vis major governed by the preceding provisions facts personal to the holder or to the party to whom he has intrusted the presentment of the bill or the drawing of the protest, and which have prevented presentment or the preparation of the protest within the necessary time.

The uniform law shall not concern itself with the consequences of measures taken by the States to extend the period of delay of protests or to extend maturity (moratoria).

*Article 73.*

The stipulation, "return without costs," inserted in a bill of exchange by the drawer, shall have the effect of dispensing the holder, in order to exercise recourse, from having a protest drawn either for nonacceptance or for nonpayment.

If, in spite of this clause, the holder has a protest drawn he must bear the costs thereof.

The stipulation, "return without costs," shall not release the holder from presenting the bill of exchange within the time required by law, nor from giving notice to the preceding indorser and to the drawer under the provisions of article 65. Nonpresentment within the required time shall involve the loss of recourse prescribed by

article 70. The burden of proof of the failure to duly present the bill lies with the party who seeks to set it up against the holder.

The stipulation, "return without costs," inserted by the drawer in a bill of exchange, shall be effective with regard to all the signers, notwithstanding any stipulation to the contrary in the indorsements.

When this stipulation is inserted in an indorsement, it shall be effective only with regard to the indorser who has inserted it. In such a case the expenses of the protest, if one has been drawn, may be recovered against all the signers.

#### CHAPTER X.—OF THE LOSS OF THE BILL OF EXCHANGE, OF FORGERIES, AND OF ALTERATIONS.

##### *Article 74.*

The owner of a lost bill of exchange shall have the right to the delivery of a new draft by the drawer by following back the series of indorsements. He shall meet the costs.

If the lost draft has received the acceptance of the drawee, the owner can demand payment from him upon the new draft only upon giving idemnity.

The law of the country where the lost bill of exchange is payable shall govern the procedure to be followed by the owner who wishes to obtain payment of it.

##### *Article 75.*

In case of the loss of a bill of exchange, the lawful holder is not bound to deliver it up unless he has acquired it in bad faith, or if, in acquiring it, he has been guilty of gross negligence.

##### *Article 76.*

The forgery of a signature, even that of the drawer or the acceptor, shall not impair the validity of the obligations arising from the genuine signatures on the instrument.

##### *Article 77.*

In case of the alteration of the text of a bill of exchange, the signers subsequent to this alteration shall be liable according to the altered text. Prior signers shall be liable according to the terms of the original text.

#### CHAPTER XI.—OF PRESCRIPTION.

##### *Article 78.*

All claims resulting from a bill of exchange against the acceptor and against the party who has guaranteed the signature of the acceptor (by aval), shall be barred after three years, calculated from the date of maturity.

Claims of the holder against the indorsers, against the drawer, and against their guarantors shall be barred after six months from ma-

turity or from the date of the protest if it has been drawn within the time required by law.

Claims for recourse of the indorsers against each other and against the drawer shall be barred after six months, beginning from the day on which the indorser took up the bill of exchange or from the day when, before any payment, the indorser has been served with notice.

The national laws shall determine the causes of the suspension and of the interruption of prescription. They shall determine if, when actions arising from the bill of exchange have been extinguished by prescription, other actions may be taken.

Interruption of prescription shall operate only against the party with respect to whom the interruption applies.

Any signer of a bill of exchange, who has been sued as guarantor, must give notice to the party immediately liable to him within the time, according to the forms, and under the penalties provided by article 65. The indorser who receives this notice must communicate it to his immediate indorser, and these notices must be repeated, reaching back to the drawer.

#### ADDITIONAL PROVISION.

#### *Article 78 (bis).*

There shall be no impairment of the provisions of national laws which impose upon the drawer the obligation to provide cover at maturity and which determine the rights of the holder under such cover.

### CHAPTER XII.—OF THE PROMISSORY NOTE TO ORDER.

#### *Article 79.*

A promissory note to order shall contain the unconditional promise to pay a certain sum. It shall be dated and shall indicate the place where it is signed. It shall set forth the name of the party to whose order it is drawn, the maturity, and the place where payment is to be made. It shall be signed by the party who issues it.

In countries where, in the case of the bill of exchange, the designation of the document must be inscribed thereon, the same rule shall apply to the promissory note to order.

It is not necessary that the promissory note shall specify the value received.

#### *Article 80.*

All the rules relative to bills of exchange shall apply to the promissory note with the exceptions indicated below:

(a) The maker is bound in the same manner as the acceptor of a bill of exchange. Consequently, promissory notes shall not be subject to acceptance; neither the maker nor the party who has guaranteed his signature by aval shall be able to set up against the negligent holder that he has lost his rights of recourse; actions against the maker and his guarantor shall be barred after three years, dating from maturity; a promissory note can not be made in a set; and a promissory note payable to the order of the maker shall be void.

(b) For promissory notes payable at a certain time after sight the time shall run from the date of the visa signed by the maker on the note. The refusal of the maker to give his visa or to date it shall be certified by a protest. The date of said protest shall be counted as the beginning of the time after sight.

**GENERAL RESOLUTIONS.**

I. The uniform law shall not apply to the promissory note payable to bearer.

II. It shall not apply to checks nor, in general, to other instruments to order except the bill of exchange and the promissory note to order.

**SPECIAL RESOLUTION.**

The provisions of fiscal laws shall not be enforced by the nullity of the bill of exchange or the promissory note to order, nor by disabilities.

The Rapporteurs:

CH. LYON-CAEN.  
SIMONS.



## VII.—REPORT PRESENTED TO THE CONFERENCE BY THE COMMISSION ON INTERNATIONAL PRIVATE LAW<sup>1</sup> AND THE COMMITTEE ON FORM.

The commission on international private law has been charged with examining, not only the questions of international private law in the strict sense of the term (Nos. 3 and 36 of the Questionnaire)—that is, conflicts of law—but also a certain number of questions of a general character which have been referred to it by the conference or by the central committee.

It has prepared an advance draft of a convention which takes into consideration the cases remitted to national laws, contained in the resolutions adopted by the central committee and already submitted to the conference.

Further, a committee on form, presided over by the president of the conference and composed of the rapporteurs and the assistant rapporteur<sup>2</sup> of the central committee and of the members of the commission on international private law, was charged by the central committee, at its last sitting, with preparing the final protocol for submission to the conference and the draft of a law intended to be annexed to the advance draft of the convention. It appeared to the rapporteur of the commission on international private law, who was also charged with presenting to the conference the report of the committee on form, that the questions treated in the texts prepared by the two bodies were intimately linked with each other and could with difficulty be divided. He therefore resolved to formulate only a single report.

To this report will therefore be annexed the draft of the final protocol proposed for discussion by the conference. To this protocol are joined the advance draft of the convention prepared by the commission on international private law and the advance draft of the law prepared by the committee on form.

Before examining in detail the provisions of these texts, it was thought proper to set forth here some general considerations of great importance, both theoretical and practical, concerning the scope and form of the documents under consideration.

### I. GENERAL CONSIDERATIONS.

The conference has for its object to attain unification of the law on the bill of exchange and the promissory note to order. For the sake of simplicity it will be spoken of simply as the bill of exchange. This unification may be viewed from several aspects.

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<sup>1</sup> This committee is composed of MM. Kriege (Germany), president; de la Vallée-Poussin (Belgium); Renault (France), rapporteur; Belchmann (Norway); and Asser (The Netherlands).

<sup>2</sup> MM. Ch. Lyon-Caen and Simons, rapporteurs, and M. Carlin, assistant rapporteur.

## SCOPE OF THE LAW.

The law, the preparation of which is under consideration, might deal only with the regulation of international bills or might include also bills circulating in the interior of a single country. At first sight it might be thought that in an international conference it would be natural to deal only with international operations and to disregard operations whose effects are limited to a single country. It is in the former cases that the diversity of laws produces serious inconveniences. In the second class of cases difficulties might arise from the existence of a judicial system which was antiquated and at variance with the modern needs of commerce, but if the difficulty was real that country would have no one but itself to blame for not adopting legislation more perfect in character. If an international regulation was established convenient in character and responding to commercial needs it could easily be extended to the interior circulation. Was it not in this manner that the transportation of merchandise by railway was dealt with? The convention of 1890 concerned itself only with international transportation, but in several countries internal legislation has been modified to bring it into harmony with international legislation.

It has, however, been admitted that the uniform law will govern all bills of exchange, and it is easy to be convinced that it could not well be otherwise. The argument drawn from the convention in 1890 is not pertinent, for the simple reason that while it is easy to distinguish interior from international transportation, it would be difficult to distinguish two species of bills of exchange. Without doubt a bill drawn from one country upon another, as from Paris upon Berlin or Amsterdam, would be considered as an international bill of exchange; but a bill drawn from Paris upon Lyons or Bordeaux might be indorsed in Germany or in Switzerland and become an international bill. It could not be known, therefore, at the time of its creation by what rule the draft would be governed. Moreover, in place of the simplicity which is desired it would be complication which would ensue, since even within the same country, in place of having, as to-day, a single law, one would have two operating side by side. Duality is then impracticable. The same law must regulate all operations of the same nature made within a given territory, due consideration being given to the reaction of these operations elsewhere.

A bill of exchange created in France must fulfill the same conditions of form and have the same results whether it is payable in France or abroad; in the same manner, an indorsement made within the territory of a single country should be submitted to the same rules, without the obligation of considering the place of creation and the place of payment of the document upon which it is placed. Otherwise the conditions of security and simplicity which are sought would not be fulfilled. Let it be added finally that, even for a bill of exchange circulating only in the interior, there might be involved an international interest, because of the fact that often persons of different nationalities appear on the same bill. The countries which are in close relations, which in a manner exchange their subjects with each other, would find advantage in the fact that uniform rules would apply to operations taking place among them.

It is proper to remark that in the present case, contrary to what happens in certain domains of the law, the nationality of persons, apart from questions of competency, is almost a matter of indifference. The law must regulate operations of exchange taking place within the territory, whoever may be the persons who figure in such operations. From this idea must follow this logical consequence, that the proposed law, taking the place of the law of each country, must be of general application—that is, it must regulate even bills coming from States which are not parties to the law or destined for such States. If the rules adopted are sound, there is no reason for limiting them to a single category of bills. It will appear, however, further on that it is necessary to consider that the application of the law to noncontracting States will not be of the same nature as the application of the law to States parties to the convention—at least so far as concerns certain of the rules. (Vide Article 17 of the draft of the convention.)

#### CHARACTER OF THE LAW.

What shall be the character of this uniform law? It is possible to conceive of several systems. There might result from the conference merely mutual enlightenment obtained from the deliberations. Each country, instructed by its delegates, might establish a law which would respond as far as possible to the common views disclosed here. This would evidently amount to little, and inquiries on the subject have for some time been sufficiently exhaustive for each country to be able, if it desired, to make its own special investigation without having need to send delegates to a diplomatic conference.

One might go farther and agree upon the text of a law to be introduced later into the legislation of each country without assuming any obligation to maintain it. This would establish uniformity in fact, but not uniformity of law. It was thus that the bill of exchange act of 1848 was enacted in Germany; it was thus also that the three Scandinavian countries acted in 1881. A simple uniformity of this sort seems rather difficult to establish and to maintain between many States under conditions very diverse. If it was simply a matter of having the new law voted like an ordinary law by the different legislative bodies, it would not be easy to obtain the abnegation necessary to refrain from amendment; it could not be ignored that all the provisions proposed would not be equally acceptable in each country and that there would be a strong temptation to strike out those which were least acceptable. The work must be examined in its entirety and must be accepted if, all things considered, this entirety is satisfactory. This can be accomplished by means of a convention, which would bind us without doubt, but it would bind others equally toward us. It is a union that must be formed, and this union must confer reciprocal rights and duties.

It is required, then, that the character of a convention shall be given to the proposed law, and article 1 of the draft of the convention which we submit sets this forth clearly. This involves grave consequences which should not be ignored, but which appear to be necessary if a durable uniformity is to be sought.

A variety of precautions are proposed to facilitate the adoption of this law and to avert the anxieties which its adoption might cause.

The needs of commerce are everywhere nearly the same, with the result that similar customs have become established on essential points. As has been said with reason, "simple instrument of civil or commercial transactions, free from all bonds which subject it to dependence upon ideas, moral, religious, or social, the bill of exchange seems to involve only technical questions and to present an abstract character highly suitable to facilitate agreement." Legislative provisions on the subject differ more than practice. The text proposed may appear to depart much from the text of ancient law in this matter; it will depart less than might be supposed from the rules introduced by practice and jurisprudence under the empire of a law antiquated in appearance, but whose provisions have been sufficiently flexible to permit usage to adapt itself to the variable needs of commerce. The project so conscientiously prepared by men of competence in varied fields—diplomats, juriconsultists, magistrates, and men of affairs—has been guarded against rash innovations. Above all, it introduces greater precision and uniformity in practice, while avoiding useless interference with established habits. The bond which it is sought to establish between the different States must not be a heavy chain, but must be sufficiently flexible to respect the liberty of each in that which it considers essential. It is in view of such ideas that upon a considerable number of points the resolutions adopted by the central committee and by yourselves remit to the national laws, at least for the present, the cases where the establishment of a unique rule has appeared impossible.

The question involved, moreover, is not to bind ourselves indefinitely, but to make a serious experiment which it is hoped will prove favorable. If, however, a country discovers that upon one point or another the rules accepted are harmful, it will always be able to liberate itself by means of a denunciation of the convention. It will be able to withdraw from the union when it presents, in its eyes, more inconveniences than advantages. This is without doubt an extreme measure of defense, which it will probably not be necessary to employ. We propose another, more practical and better adapted to attain the end sought—the meeting of a conference which may examine the results of the experiment and complete or alter the provisions of the law or of the convention. A special clause, which will be commented upon further on, regulates this point.

#### FORM OF DIPLOMATIC INSTRUMENTS.

How shall the uniform law be introduced into the different countries? A certain latitude ought to be allowed in order to take account of constitutional or other limitations. Even though the end may be the same, the roads by which it is reached may be different.

First arises the question of language. There will be without doubt, from the international point of view, a single text—that which will be prepared by us and which will be definitively adopted by our successors. But this text can not be submitted as it is to legislative approval in all countries nor promulgated by the Government nor interpreted by the courts. It will have to be translated. It remains clear that if this translation is, as it naturally will be, binding upon the authorities and the tribunals of the country, it will have value

from the international point of view only in the degree to which it conforms strictly to the French text. Each Government will be responsible for its translation, and this responsibility may well involve diplomatic consultation. It is for the sake of the principles that these ideas, which are not a subject of dispute, are recalled. Each Government will obviously seek that the translation which it adopts shall not give rise to criticism.

Leaving aside the question of language, it is possible to conceive of the employment of a variety of methods for the introduction of uniform law into internal legislation. A country might promulgate it as it is, while accompanying it with an executory law by means of which it might exercise the power which is reserved to it of introducing into the uniform law certain modifications or of making additions. There would then be two laws operating side by side.

It will, therefore, probably be more simple to introduce directly into the law the modifications and additions which are authorized, in order to have only one text sufficing for the entire subject. It would seem to be necessary to proceed in certain cases in this manner. A country, for example, which wished to exclude the necessity of the designation of the bill of exchange would scarcely be able to promulgate officially the formula adopted by the majority and set forth in article 1, section 1, of the project. It would set forth directly "the bill of exchange must contain (1) designation as a bill of exchange or the clause to order."

Undoubtedly the uniform law should be modified or completed only to the extent fixed by the convention, and it is proper to make here observations similar to those which have been presented above in regard to the translation, in that it relates to the responsibility of the Governments.

Even supposing the law completed, in conformity with the views of the convention, the law will not be self-sufficing for all the questions and actions of a nature to arise in relation to a bill of exchange. Jurisdiction and procedure are entirely outside the project and are left to the national law. This is an important point to be noted, because there are countries where there is a special procedure in the matter of bills of exchange, especially the provisions in regard to the manner in which the payee may set up defenses against the holder, if he is not affected.

After these preliminary considerations, it is proper to take up successively the different subjects submitted to your approval.

## II. ADVANCE DRAFT OF A UNIFORM LAW ON THE BILL OF EXCHANGE AND THE PROMISSORY NOTE TO ORDER.

The Questionnaire of the Government of the Netherlands asked whether the uniform law ought to regulate in a complete manner the entire law of bills of exchange (with the exception of some matters, like the form of protests, which are by their nature within the scope of national law), or ought to restrict itself to laying down the principles, leaving to each nation the function of regulating the details. After several tentative efforts, the consideration of details seems to be imposed by the force of circumstances if uniformity is to be seriously sought. Thanks to the talent of the eminent rapporteurs



of the central committee, resolutions have been laid before that body which, under a more modest form, constitute a genuine project of law, governing the subject in its entirety. To the committee on form has been left only the modest labor of presenting to you the advance draft of a law.

To begin with, the position of several articles has been changed in the interest of method. To facilitate comparison, a reference has been placed in the margin to the corresponding articles of the resolutions, which will facilitate finding the commentary of the report when required.

What is more important, it has been necessary to eliminate the references to national laws which, while necessary in the resolutions, where it concerns simply making clear the scope of the proposed rule, had no place in the project of a law. It is in the project of the convention that these references should be found under the form of clauses reserving to the contracting States the power to complete or modify the articles of the law. These clauses will be commented upon later. It results from this that the uniform legislation proposed is made up by the combination of the project of law properly so called, and of the project of the convention. To make this combination clear, the articles of the project of law which contain references to the national laws have been accompanied by a note reproducing the clause of the convention which is intended to give effect to these references, and to indicate the power reserved to each contracting State.

It might be thought that from this course would not result a uniformity which was complete; but it is necessary to consider that one ought not to offend the members of an association yet to be formed, but that it is necessary to be content with the minimum required to attain the object of the association and to leave to its members, outside of this minimum, the liberty of preserving their ideas and customs. It is on time and not on the resolution of an assembly that it is necessary to count to tighten the bonds of a union and to temper the differences which may exist.

The commentary on the articles of the project has already been presented to the conference in an eminently able manner by M. Lyon-Caen and M. Simons and it is not necessary to again traverse the same ground. The commission on international private law has, however, been charged with preparing the provisions relative to conflict of laws. These propositions form Chapter XII of the project (arts. 83 to 87) and require explanation.

Conflicts of law in the matter of the bill of exchange will naturally decrease greatly in importance between States which enter into the proposed union, but this is not to say that they will entirely disappear. They may present themselves either in regard to questions not regulated by the uniform law or upon points with which the law deals, but which it has not regulated in an absolute manner.

#### CAPACITY.

The uniform law does not regulate the capacity to obligate one's self by a bill of exchange. This is determined by the law of each nation according to its special views. There are naturally divergences, whether with regard to the age of majority or with regard to

certain conditions, like that of the married woman. Conflicts may then present themselves. Shall they be left under the empire of the common law in the matter of capacity? It is this question which it is necessary to examine.

The principle which tends to prevail is that the capacity of a person is determined by his national law and that its provisions upon this point should be accepted everywhere—that is, even outside the country of such person. The only exception is in the case where the solution given by the national law would impair a principle of a fundamental character in the country where the question presents itself. The conventions of The Hague upon private international law apply this rule. Shall we be content with it in the matter of the bill of exchange?

In case of an affirmative answer, the person who would have entered into an engagement by means of a bill of exchange might invoke the nullity of his obligation on the ground of incapacity, resting upon his national law even when, according to the law of the place where the obligation was assumed, he would have been considered as having capacity. It is easily understood that with the rapidity required for operations in bills of exchange such a rule would involve many inconveniences and would not meet the requirements of credit. Hence, in legislation on the bill of exchange in which this hypothesis has been anticipated there exists a provision according to which it is sufficient, in order to be lawfully bound by the bill of exchange, to possess capacity according to the legislation of the State in the territory of which the engagement was assumed. Even in those countries where a provision of this sort does not exist the disposition of the courts is not to admit nullity for incapacity under such conditions. We propose to sanction this rule, which derogates from the ordinary principles of law, but with evident economic benefits.

If the individual concerned possesses capacity according to his national law, this evidently suffices for the validity of the engagement, even when he might be considered as lacking capacity if the law of the country where he had contracted was applied.

Up to this point we have spoken only of the national law, which is in most cases competent to determine personal status. It is possible that this law may refer to another law for this determination, recognizing, for example, the law of domicile as exclusively competent to govern the case. It is this law in such cases that should be applied.

We have formulated in the following manner the rules above set forth:

### *Article 83.*

The capacity of a person to render himself liable on a bill of exchange shall be determined by his national law. If such national law declares the law of another State to be applicable, the latter law shall be applied.

A person who might be incapable of contracting under the preceding paragraph, shall nevertheless be liable if he has entered into engagements within the territory of a State according to the law of which he would have been competent.

The interests of the country where the obligation by bill of exchange has been assumed are thus safeguarded. But it is necessary to consider also the interests of the State from which comes the person obligated. Shall it recognize the validity of the obligation assumed? It will be readily understood how serious this would be,

since it would suffice for persons without capacity to cross the frontiers and enter a country where their incapacity did not exist, in order to evade the law of their country. The protection of the national law would be entirely lacking. The laws of the majority of countries provide expressly that their citizens or subjects are governed in their condition and in their capacity by the laws of their country, even when they resided abroad. See, for example, Article III, paragraph 3, of the French Civil Code. It is proper, therefore, to reserve to the State whose subject is thus declared legally bound by the application of local law the power not to admit the validity of such an obligation. Such a power is provided by article 15 of the draft of a convention, which it is proper to set forth in this connection in order to have before us the regulation of the situation in all its phases:

Each contracting State shall have the power to refuse to recognize the validity of an engagement entered into in regard to a bill of exchange by anyone within its jurisdiction, which would not be held valid within the territory of the other contracting States except by application of article 83, paragraph 2, of the law.

Let it be noted that the engagement which is in contemplation is to be held valid in all States other than the State of the origin of the obligee; save in the last State, there is no reason for a distinction between the different States where the question may be raised.

#### FORM.

Contrary to what has been proposed in regard to capacity, the law contains rules on the form of various engagements which may be assumed in regard to a bill of exchange, whether with the drawer, the indorser, or the acceptor, are concerned. In consequence, it is less conceivable that there should be conflicts between systems of legislation which are to be identical. From the point of view of form, however, this identity is not absolute; moreover, it is necessary to provide for the case of bills of exchange drawn from a noncontracting State upon a contracting State, or the reverse—since, as has been explained above, the uniform law should be of general application. The rule which we propose is the traditional rule:

#### *Article 84.*

The form of any contract on a bill of exchange shall be regulated by the laws of the State within the territory of which such contract was made.

An explanation, however, will not be superfluous, in view of certain interpretations of the maxim *locus regit actum*.

Let us refer to operations in the bill of exchange between Germany and France. The first requires that the bill shall contain expressly the designation of a bill of exchange; the second being content with the clause "to order." A bill is drawn from Paris on Berlin which contains only the clause "to order." By the application of article 84, such a document would have to be considered at Berlin as constituting a bill of exchange. Conversely, a bill is created in Berlin on Paris; it contains the clause "to order," but not the designation as a bill of exchange. By the application of this same article, it will not be valid in France. We have excluded the possibility of admitting

such a bill as regular in France, under the pretext that it conforms to the legislation of the country where the question is raised (optional character of the *maxim locus regit actum*). Otherwise the legislation of Germany would not be sufficiently respected. She attaches great importance to the designation of bill of exchange, since it appears to her to be of a nature to attract the attention of the interested parties to the rigor of the obligation which they have assumed by the fact of their signature to such a document. It constitutes for her a measure of protection which must be everywhere recognized.

We have deemed it necessary to give some special explanations in regard to protests:

#### *Article 85.*

The form of the protest and of the other acts necessary for the exercise or for the preservation of rights on a bill of exchange shall be regulated by the laws of the State within whose territory the protest must be drawn up or the act in question must be done.

The scope of this provision is broad. To the law of the State where the protest shall be drawn it is left to determine the proper public officer, the manner in which he shall draw his act, the place where it shall be drawn (at the place of business or residence), and the hours of the day within which he shall have power to act. What is said of protests applies to other acts necessary to the exercise or the preservation of rights in this matter.

### III. ADVANCE DRAFT OF THE CONVENTION.

This advance draft has for its object to fix the scope which is to be given to the uniform law, to regulate the powers reserved to the contracting States to modify or to complete the uniform law on certain points. It contains also provisions on other points of the subject matter, some of which are not without importance.

The first article of the convention is the pivot of the system adopted, which has been fully set forth in the preliminary discussion:

#### *Article 1.*

The contracting States undertake to introduce in their respective countries, either in the original text or in their national languages, the law on bills of exchange and promissory notes to order, annexed hereto, which shall come into force at the same time as the present convention.

This agreement shall extend to the colonies, possessions, or protectorates, and to the jurisdictions of the consular courts of the contracting States, so far as the laws of the mother country apply to them.

The fact that this law is in the nature of a contract between States is thus clearly indicated. This law must extend, not only to the territories of the contracting States, but also to territories which under various names are dependent upon them in such a manner that their laws are naturally applied there. It seems proper to make the law clear on the subject of consular jurisdiction, because of the difficulties which have been sometimes raised on this subject in connection with other international conventions.

We come now to the operation of those cases remitted to the national laws which are found in the resolutions. Few explanations on this subject are necessary. It will suffice to consult the report of

Mr. Lyon-Caen and Mr. Simons to ascertain the motives which have inspired the reservations which will be enumerated.

These reservations divide themselves, in general, into two parts: (1) What rights are reserved to each contracting State? (2) Will the exercise of such rights be recognized by the other States to the extent that the provisions enacted will be effective within their limits?

### *Article 2.*

In derogation from article 1, paragraph 1, provision 1 of the law, each contracting State may prescribe that bills of exchange issued within its territory which do not bear the designation, "bill of exchange," shall be valid, provided they contain the express indication that they are drawn to order.

This article sanctions one of the most important provisions, which has been inspired by the spirit of conciliation by which the conference has been animated. Thus, a State may decide that the bill of exchange must contain either designation as a bill of exchange or the clause "to order." It has been explained above, appropos of article 84, how the conflict of laws will be regulated which might then occur.

The majority of the conference has approved bills of exchange "to bearer." The opposition of certain States has rendered necessary the option of departing from the general rule laid down. The motives of this opposition were varied, the most important being drawn from the necessity of protecting the monopoly of the banks of issue. This necessity exists preeminently for bills "to bearer" and "at sight," but it has been thought proper to give to the provision a general character.

### *Article 3.*

In derogation from article 3, paragraph 4, of the law, each contracting State may prescribe that a bill of exchange bearing the stipulation "payable to bearer" shall be considered void within its territory if it has been drawn, accepted, or guaranteed (by aval) within its boundaries or if it is payable there.

Indorsement by guarantee is admitted by the uniform law (art. 19), but certain States may not desire it. They have the power to decide that a declaration implying a pledge in an indorsement made within their territory shall be considered null. Other States must, under such circumstances, consider it as such. If it is asked what will then become of the indorsement, we believe that it will have the effects of an ordinary indorsement, transferring the property except as to the parties—that is, leaving to the indorser who had the intention of constituting a pledge and to the beneficiary of the indorsement to regulate their relations according to the agreements adopted between them.

### *Article 4.*

Each contracting State may prescribe, in derogation from article 19 of the law, that in an indorsement made within its territory any mention implying a pledge shall be deemed invalid.

In such a case such mention shall also be deemed invalid in the other States.

The law requires that the guarantee shall be given on the bill itself. In order to recognize a traditional practice, it is permitted to a State to admit that an obligation assumed within its territory in respect to a bill of exchange may be guaranteed by means of a guarantee given by separate act.



*Article 5.*

In derogation from article 36, paragraph 1, of the law, each contracting State shall have the power to prescribe that in order to give security in matters of bills of exchange within its territory a guarantee may be given within said territory on a separate document specifying the place where it was executed.

It is proper to remark that two conditions must be combined—the primary obligation and the guarantee must take place within the same territory.

The provision in regard to bills payable at a fair does not require explanation.

*Article 6.*

In addition to article 38, paragraph 1, of the law, each contracting State shall have the power to allow bills payable at a fair within its territory and to fix the date of their maturity.

Such bills shall be recognized as valid by the other States.

The law (art. 47) declares that the bearer may present the bill at maturity. In certain countries it is said that he must do so without, however, enforcing this obligation by loss of recourse. The bearer who has failed to comply is subject to a suit for damages if his negligence has caused a loss. The national law may maintain or introduce such an obligation for bills payable within the territory under its control. The other States may or may not recognize such a provision.

*Article 7.*

Each contracting State may complete article 47 of the law in such a way that for a bill of exchange payable within its territory the holder shall be bound to present it on the day of its maturity, the failure to obey this clause only giving rise to an action for damages.

The other States shall have the power to determine under what conditions they will recognize such an obligation.

The law does not admit the right of the holder to refuse a partial payment (art. 48, par. 2). Certain countries have demanded the right of refusing such a payment if it is not tendered under certain conditions. The right thus accorded will exist not only in the country which has established it, but will be recognized also by the other States.

*Article 8.*

In derogation from article 48, paragraph 2, of the law, each contracting State may authorize the holder within its territory to refuse a partial payment if the payment is not tendered to the holder at his place of business or is tendered after protest.

Such a right given to the holder shall be recognized by the other States.

It is granted to a State to decide that the protest may be replaced by a declaration which may be availed of only under conditions strictly fixed and which will be recognized by other States when the conditions required are of a character to afford complete security.

*Article 9.*

In derogation from article 52 of the law each contracting State may prescribe that, the holder assenting, protests to be drawn within its territory may be replaced by a declaration, dated and written upon the bill of exchange

itself, signed by the drawee, and transcribed in a public register within the time fixed for protest.

Such a declaration shall be recognized by the other States.

Article 10 permits certain States to maintain a system under which the notice of nonpayment which must be given by the holder to the drawer within the delay of four days may be given by the public officer charged with drawing the protest. The text makes no distinction whether the holder is or is not domiciled in the same country. This has been admitted because the fact of the transmission by a public officer to another country of a letter simply mentioning the nonpayment has not seemed of a nature to infringe upon the sovereignty of the State within whose territory the letter is received.

#### *Article 10.*

Each contracting State shall have the power to prescribe that the notice of nonpayment provided for in article 55, paragraph 3, of the law, may be given by the public officer charged with drawing up the protest.

Article 63, paragraph 1, of the law, enumerates the cases in which the situation of the acceptor gives occasion to exercise the same immediate recourse as after protest for nonpayment. It goes without saying that the conditions in which there may be bankruptcy or loss of benefit of the legal delay are determined according to the law of the country of the acceptor. For example, bankruptcy does not apply to the same persons in all countries; there is not always occasion for loss of benefit of the legal delay under the same circumstances. It belongs to the courts to determine whether there has been suspension of payments or not.

There has been a desire, moreover, to allow the increase in the number of such cases. It may occur, for instance, that in certain countries insolvency may be legally established in a manner which involves the concession of time to a debtor, but which still justifies recourse by the holder.

#### *Article 11.*

Each contracting State shall have the power to prescribe that when the insolvency of the acceptor of a bill of exchange residing within its territory is legally established such cases shall be assimilated to those provided for in article 62, paragraph 1, of the law.

The effect of such assimilation shall be recognized by the other States.

Article 12 is of great importance, because it touches upon one of the points on which a grave divergence prevails in the legislation of different countries. It concerns the theory of providing cover, which is recognized notably by French and Belgian legislation, but is unknown in the countries which follow the legislation of Germany.

This theory will not be dealt with by the uniform law; it will subsist to the extent to which it actually exists. The conflicts which arise between the laws which admit it and those which exclude it will be regulated as if the new law did not exist. These conflicts will occur only in the case of bills drawn from a country which admits the provision upon a country which does not admit it, or in the reverse case. For bills circulating in the interior of the same country there will be no conflict, and the system admitted by the national law will be fully applicable.

Article 12 makes two applications of this principle. A negligent holder confronts the drawer. Shall the latter be able to escape any

action by pleading loss of recourse? Under the French theory there will be a distinction as to whether the drawer has or has not provided cover. Under the German theory it is permitted to sue the drawer if he has acquired any inequitable gain (*Bereicherungsklage*). It is nearly the same thing under different names.

A similar observation may be made in case of prescription, for the drawer or for the acceptor.

In the preceding cases, while one finds in reality a similar system under different appellations, there are cases where there is nothing corresponding to the theory of provision, because it is not admitted into legislation. Is the drawer bound to provide cover at maturity or has the holder special rights over this cover? These questions present serious interest in the case of the failure of the drawer. They are important questions, especially the last, which, as has been said above, are not touched by the new law.

### *Article 12.*

Each contracting State shall be free to decide, in case of loss of recourse or of prescription, that there shall lie within its territory an action against the drawer who has not provided cover or who has acquired any equitable gain in respect of it. The same power shall exist in case of prescription in regard to the acceptor who has received cover or has acquired any inequitable gain in respect of it.

The question whether the drawer shall be bound to provide cover at maturity and whether the holder has any special rights over said cover, shall be outside the scope of the law and of the present convention.

In case of the loss of a bill of exchange, there are two different systems—the system according to which the owner may require payment from the drawee by means of a bond and in virtue of a judicial decision and the system according to which a procedure is instituted with the view of annulling the lost bill (*Amortisation-Verfahren*). Each country is satisfied with the system which it has and does not desire to change it. It is therefore permitted to retain it.

Will the judicial decisions which may be made on this subject within a given State be recognized in the other States? It is difficult to decide in the affirmative in an absolute manner. The conditions under which a judicial decision rendered in one country shall be recognized in another depend on elements very diverse and have not been herein provided for.

### *Article 13.*

As a supplement to articles 80 and 81 of the law, each contracting State may, in the case of the loss of a bill of exchange payable within its territory, fix the terms under which payment of the bill may be demanded on giving an indemnity and under a judicial decision, or may establish a procedure for the annulment of lost bills.

The other States shall have the power to fix the terms under which they will recognize the judicial decisions given in accordance with the preceding paragraph.

Article 82 of the law regulates the subject of prescription. It has left unsolved a certain number of questions which relate to modes of suspension or of interruption of the prescription. Article 14 of the convention authorizes national legislation to regulate them.

*Article 14.*

Each contracting State shall have the power to prescribe that conditions constituting a demand upon the indorser shall be considered equivalent to bringing the action against the indorser provided for in article 82, paragraphs 3 and 5, of the law.

It shall also have the power to determine, in supplementing article 82, the causes for suspending or interrupting prescription in actions arising on a bill of exchange which are brought within its territory.

The other States reserve to themselves the right of determining under what conditions they will recognize the consequences of an action begun, in virtue of article 82, paragraphs 3 and 5, of the law, outside of their territory, and the consequences of the assimilation provided for in paragraph 1 of the present article. They shall have the same rights in cases of suspension or of interruption of prescription provided for in the preceding paragraph.

Article 15 refers to capacity and has been explained above, apropos of article 83 of the law.

*Article 15.*

Each contracting State shall have the power to refuse to recognize the validity of an engagement entered into in regard to a bill of exchange by anyone within its jurisdiction which would not be held valid within the territory of the other contracting States, except by application of article 83, paragraph 2, of the law.

In certain countries fiscal provisions (stamp taxes) in the matter of bills of exchange are not enforced merely by penalties of the nature of fines, but also by the nullity of the bill which is not stamped, or by the loss of certain rights. Such provisions can be considered only as regrettable, because they produce a serious perturbation in the relations contemplated. It is not sound morality that an individual shall be released, because of the absence of a stamp, from an obligation to which he would have been subject if a bill was stamped.

The only legitimate restriction within the domain of private law should be the suspension of the rights resulting from the document until the payment of the stamp taxes, which should have been discharged for such a document.

It goes without saying that fiscal provisions should have no effect beyond the frontiers of the State which has enacted them.

*Article 16.*

The contracting States shall not have the power to subordinate the validity of engagements taken in matters of bills of exchange, or the exercise of rights derived therefrom, to compliance with stamp-tax regulations.

They may, however, suspend the exercise of such rights until the prescribed stamp taxes have been paid.

In the preliminary considerations here presented, it has been explained that the uniform law should be substituted for the national law in its application, in the various contracting States, in a general manner to all operations relative to the bill of exchange which are carried on there, exception being made for the nationality of persons who take part as well as of the source or the destination of drafts. It could not well be otherwise and no one has an interest that it should be so. In the relations, however, with noncontracting States, this application of the law must follow other principles than in the

relations between contracting States. For the latter the law arises from the convention itself; for the others it arises from free will. The noncontracting States will not be able to avail themselves of the law against States with whom they have not seen fit to join themselves. This difference involves an important consequence, which is formulated in article 17 of the project of the convention.

The convention and the law contain principles of international private law which ought to be applied by treaty to the operations of exchange which occur in the interior of a contracting country or in the relations between two or several contracting States. Normally they will apply also to bills of exchange originating in or destined for a noncontracting State. It might happen, however, under such circumstances that this application of the law would have an objectionable character because of absence of reciprocity. If I declare valid the acts occurring in a given country when that country does not recognize the validity of acts accomplished within my territory, I do it as a mark of good will, but I have the right to treat that country as it treats me—that is, to employ retaliation. Moreover, I may obligate myself to be guided by the law of a State which is in harmony with me, which accepts an aggregate of rules common to both, but I must reserve my liberty of action in regard to a State which remains outside of my association, which has not agreed to bind itself in any respect toward me. This principle may be applied in what concerns the rules on capacity, the form of acts, and certain rules interpreting the intention of the parties, like those which concern the rate of exchange, interest, etc.

It has been asked if it was necessary to make an express reservation on this subject in the proposed convention, since it concerns itself with relations with noncontracting States. It may be said that the international character of the law requires that a State shall not be able alone to modify it, even when the modifications concern only a noncontracting State.

Probably there will not be occasion to employ the reserve thus provided for. It is a weapon which will not be availed of, but there is some interest in having it at one's disposition.

### *Article 17.*

The contracting States reserve for themselves the right not to apply the principles of international private law, sanctioned by the present convention or the law, so far as concerns:

1. An engagement entered into outside the territories of the contracting States.
2. A law which would cover the case according to these principles, but which shall not be in force in one of the contracting States.

A reserve of a more delicate nature has been suggested concerning the case where a noncontracting State might take violent measures with regard to the property of the people within the jurisdiction of a contracting State. Should not this contracting State be able to respond by analogous measures and by taking the precautions necessary in order not to sacrifice the legitimate interests of the inhabitants of other States? This would appear to speak for itself. One may happily consider as improbable an hypothesis like this, upon which, therefore, there is no occasion to dwell.

The provision adopted for the bill of exchange shall be in principle applicable to the bill to order.



*Article 18.*

The provisions of articles 2, 4 to 10, and 13 to 17, concerning bills of exchange, shall apply as well to promissory notes payable to order.

This provision shall apply to article 12 as regards the provision covering any inequitable gain by the maker of a promissory note.

In the projects provisionally agreed upon there is question only of the bill of exchange and the promissory note to order. It seems, therefore, superfluous to say that the provisions of these projects are not directed to the rules relative to checks, nor, in general, other documents to order. This calls, however, for an explanation. In certain countries the legislation on checks is not complete in itself, but is supplemented by the legislation on bills of exchange. This is the significance of article 19—that the contracting States have entire liberty to maintain intact their legislation in regard to checks or to complete it by the new law on bills of exchange. The same thing may be said for documents to order in general.

*Article 19.*

The present convention and the law shall not apply to the regulations which, in the different countries, relate to checks and to instruments to order in general. The contracting States reserve for themselves complete liberty to determine to what extent the provisions of the law may apply to such documents.

Then comes a disposition purely formal, which might be considered somewhat trivial, but which has, however, a practical value. As has been seen, the contracting States may modify the uniform law or complete it directly, to the end of availing themselves of the powers which are reserved to them by the convention. It will be extremely useful for the law to preserve its uniform physiognomy, that the order of the subjects may not be changed, and that as far as possible even the numbering of the articles shall not be modified. This will facilitate the examination and application of the law in the different countries of the union.

*Article 20.*

The contracting States will see to it that the position, and as far as possible, the numbering of the articles of the law be not altered, when introducing the modifications or additions which they are entitled to make in accordance with the preceding articles.

From the same point of view the desire may be expressed that States which have the same language and which wish to make the same reservations, may agree to formulate them in terms which are identical. (Vide art. 21, par. 2.)

Article 21 explains itself. Precisely because absolute uniformity can not be expected, each Government will have an interest in knowing the measures taken in other countries in such a manner as to inform those interested.

*Article 21.*

The contracting States shall communicate to the Government of the Netherlands all the provisions which they shall enact under the present convention or in carrying out the law.

Likewise, the States shall communicate to the said Government the expressions which, in the languages officially recognized within their territories, corre-

respond to the designation of bill of exchange and promissory note to order. When the same language is used in two or more States, these shall agree among themselves, as far as possible, upon the choice of one and the same expression.

The States shall also submit to the said Government a list of legal holiday and other days when payment can not be required within their respective territories.

The Government of the Netherlands shall immediately transmit to all the other States the information which it shall have received by virtue of the preceding paragraphs.

The provisions which follow relate to the protocol. They are based upon those which are found in the latest conventions at The Hague.

### *Article 22.*

The present convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be attested in a document signed by the representatives of the States which shall take part therein, and by the minister of foreign affairs of the Netherlands.

The subsequent deposits of ratifications shall be made by means of a written communication addressed to the Government of the Netherlands, and accompanied by the act of ratification.

A certified copy of the document attesting the first filing of ratifications, and of the communication mentioned in the preceding paragraph, as well as of the acts of ratification accompanying them, shall immediately, through the good offices of the Government of the Netherlands, and through diplomatic channels, be transmitted to the States which have signed the present convention, or which have assented to it. In the cases referred to in the preceding paragraph, the said Government shall make known to them, at the same time, the date on which the notification was received.

The proposed convention ought to be an open one. The power of adhesion to it is fixed in the simplest manner.

### *Article 23.*

States which are not signatories may assent to the present convention whether they have or have not been represented at the international conference at The Hague for the unification of the law relative to bills of exchange and promissory notes.

A State wishing to adhere shall notify the Government of the Netherlands of its intention in writing, transmitting at the same time the act of adhesion, which shall be deposited in the archives of said Government.

The Government of the Netherlands shall immediately transmit a certified copy of the notification, as well as of the act of adhesion, with a mention of the date when said notification was received, to all the States which have signed the present convention or which have assented thereto.

### *Article 24.*

The present convention shall take effect, for the States which shall have participated in the first deposit of ratifications, six months from the date of the document certifying to said deposit, and for the States which ratify later, or assent thereto, six months after the receipt by the Government of the Netherlands of the notification mentioned in article 22, paragraph 4, and article 23, paragraph 2.

The convention ought to have an unlimited duration—that is, it ought not to end necessarily and legally on a certain date. It ought not, however, to fetter indefinitely the contracting parties, who might wish to release themselves by denouncing it. It has nevertheless

seemed reasonable to permit the law to be fairly tested and for this reason to delay somewhat the exercise of the power of denunciation.

#### *Article 25.*

Should it occur that one of the contracting States wishes to denounce the present convention, notification thereof shall be given in writing to the Government of the Netherlands, which shall immediately forward a certified copy of the notification to all the other States, apprising them of the date when it was received.

The denunciation, which can not take place until five years after the date of the first deposit of ratifications, shall only affect the State which shall have given notice thereof, and one year after its receipt by the Government of the Netherlands.

Finally, there should be opportunity for a new conference for the examination of the results of experience. In order that the meeting of such a conference shall not be called for mere caprice, certain conditions are required—a number of States, a reason for the request, and the lapse of a certain time. The Government of the Netherlands would have the honor and the duty of preparing for such a meeting.

#### *Article 26.*

“Three years after the first deposit of ratifications any five contracting States may address a request to the Government of the Netherlands with the object of procuring the meeting of a conference to deliberate on the question whether there is need for introducing additions or modifications in the law or in the present convention.”

### IV. PROJECT OF THE FINAL PROTOCOL.

This is a brief summing up of the labors of the conference, which may serve as a framework for the essential documents, the product of our deliberations and destined to be submitted to the favorable consideration of our respective Governments.

We propose finally to the conference to express two recommendations, on which it is to be supposed that agreement will be unanimous:

1. That the draft plans elaborated by us shall be the object, on the part of our respective Governments, of careful examination; that after having consulted the circles interested our Governments shall frame their conclusions and decide upon the project as a whole and in detail. When the necessary time shall have passed, which shall be determined by the Government of the Netherlands after having gathered information on the subject, a second conference shall be assembled which shall frame a definitive text of a nature to be signed by plenipotentiaries.

2. That it is with regret that certain delegations have seen the subject of the check eliminated from our deliberations. The check is amenable, quite as much as the bill of exchange, to international regulation, and there exists the same necessity that this regulation should be established. The Government of the Netherlands is requested to include the check in the project of the deliberations of the next conference and to plan for the work in the same skillful and useful manner which was employed for the present conference.

The rapporteur:

LOUIS RENAULT.

## APPENDIX B. PAPERS OF THE AMERICAN DELEGATION.

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### I. REPLY OF THE AMERICAN DELEGATE TO THE QUESTIONNAIRE

26 LIBERTY STREET,  
NEW YORK, *February 28, 1910.*

The SECRETARY OF STATE.

SIR: In compliance with the request of the Government of Her Majesty the Queen of the Netherlands, that the views of the American Government on the subject matter of the proposed conference on a uniform law for international bills of exchange should be submitted not later than the close of the present month, I am sending you herewith for your consideration the conclusions at which I have arrived after many conferences with those interested in the subject.

I have held a number of general meetings, to which I have invited leading bankers dealing in foreign exchange, the counsel of the American Bankers' Association, representatives of the commissioners on uniform State laws, leading import and export houses, and others. I have also sent copies of the Questionnaire to nearly 100 persons in leading banking and shipping centers likely to be interested in the subject of the conference, and have received many replies going at length into the merits of the questions presented.

The adoption of a uniform law on bills of exchange, which should deal with all aspects of the subject, would involve the consideration of so many questions of commercial and banking practice and of so many decisions of the courts in many countries, that it seems advisable to American bankers and others interested that effort should be concentrated upon a few important points of conflict in the existing laws of nations, in order that they may be intelligently dealt with, even if it is found impossible to give adequate consideration to the preparation of a complete codification.

In respect to a general law dealing with the subject in its entirety, there are already 38 of the 46 States of the American Union and four other political units under American sovereignty which have such a law, known as the negotiable instruments law, which is substantially uniform in all these States and conforms also to similar laws in Great Britain and most of her dependencies. A copy of the negotiable instruments law of the State of New York is appended to this memorandum. This law is based in many features upon the law merchant, as it has been developed by commercial and banking custom in most of the countries of Continental Europe and in other parts of the world. In most respects this law has contributed to certainty in banking operations, has simplified legal practice, and has promoted uniformity and convenience in commercial transactions. In those respects in which it is defective or in conflict with the laws

of other countries, or where decisions under it by the courts have contributed to conflict of laws, American bankers and merchants are willing to consider modifications and supplementary legislation which will remove these differences or occasions for conflict.

There is cordial sympathy among American bankers with what is understood to be the primary object of the conference—to make international bills of exchange more uniform and certain in their provisions and interpretation and therefore more readily negotiable in the channels of international banking. Only within a comparatively recent time have such bills come to be used by American bankers to any large extent as investments, and the system of acceptance by bankers, in order to give greater negotiability to bills, is employed only to a limited extent in the case of bills circulating wholly within the United States. For these reasons, American bankers are prepared to cooperate in the adoption of general rules for avoiding conflicts of law over international bills and maintaining and enlarging that high character of negotiability which they already possess under the law merchant.

Among cases where conflict has sometimes arisen, which American bankers consider it important to have prevented in future, are cases involving the determination of what law shall govern protest, both as to the character of the formalities to be observed and the time within which protest may be made. While in most cases the law of the country where a bill is payable is accepted as the law governing protest in case of dishonor, a decision of the court of appeals of the State of New York has been adverse to this practice. This decision, in the case of a bill drawn in New York upon a payee in Austria, practically laid down the rule that, in order to hold the drawer, the protest must be made in Austria according to the forms prescribed in New York, because the contract of the drawer was made in New York, although the place at which payment was to be made and where default occurred was in Austria.

Conflict between the practice in certain foreign countries and in the United States arises not only in regard to the form of protest, but also in regard to the time allowed for such protest. In the United States protest is usually required to be made on the day of the dishonor of the obligation, unless delay is excused for reasons allowed by the statutes; but in most countries of Continental Europe protest on the day following dishonor is sufficient to hold the parties. Upon these subjects there is much to be said for the practice prevailing on the Continent, and American bankers and others interested would be willing to accept substantially the following rules:

I. That the form and manner of protest of a dishonored bill of exchange shall conform to the law of the country where payment of the bill is provided for and where dishonor occurs.

II. That protest of a bill of exchange for nonacceptance or for nonpayment shall constitute a valid protest when made on the first day after dishonor, and shall be binding upon all parties who would be bound by protest on any other day.

III. That when a bill is presented for acceptance, the drawee shall have the right to reserve his decision upon acceptance until the following day, but may accept on the day of presentment.

Another point considered by many American bankers as of very considerable importance is the general adoption of the American system of paying checks and bills only upon the identification of the



person by whom payment is demanded. Under the existing practice in European countries of making payment of a negotiable instrument to any holder thereof, even in some cases where there are just grounds for suspicion that he is not the legitimate payee, checks and bills lose much of the security which would be derived from the requirement that the person claiming payment should show evidence that he is a rightful holder of the paper. When a check or bill is thus paid, without demanding proof of the identity of the holder, the document is reduced, to a certain extent at least, to the character of money or paper currency which passes by delivery and affords few safeguards against theft from the rightful owner.

While a combination of circumstances protects such paper in ordinary cases from falling into unauthorized hands, cases have not infrequently arisen where heavy losses have been suffered by American bankers, who have felt compelled to hold themselves responsible to their clients for money paid by European bankers to other than the legitimate holder of the paper. While the risk is guarded against in some cases by issuing only crossed checks or bills, crossing is objected to by some European bankers and is not considered a satisfactory substitute for identification. In the opinion of American bankers the system of paying only to a holder known to the payee, or identified personally by responsible parties or by other unquestionable evidence of ownership, would add greatly to the security of transactions in such paper.

Taking up the subjects named in the "Questionnaire" submitted by the Government of Her Majesty the Queen of The Netherlands, comment will be made briefly under each general head, without undertaking to answer in detail each of the subdivisions of the thirty-six questions submitted.

(Question 1.) Upon the question whether the conference should concern itself exclusively with the bill of exchange and the promissory note, reserving for the consideration of a later conference the law concerning the check, it seems desirable that all these fields should be covered in so far as measures recommended by the conference are of common application to bills of exchange, promissory notes, and checks. The laws governing the liability upon all these documents have many points of similarity, and even if the bill of exchange is made the primary subject of consideration by the conference there is apparently no reason why recommendations which may be made in regard to bills which are also applicable to the check should not be extended to that instrument.

The law of the State of New York governing bills of exchange contains this provision (N. I. L., sec. 32).

A check is a bill of exchange drawn on a bank, payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

This is the law in 37 other States of the 46 comprising the American Union.

(Questions 2-3.) While the adoption of a complete code governing all these subjects would be desirable from the standpoint of theory, it is probable that the difficulties attending its preparation and general adoption would be great. There would arise not only the preliminary difficulties of perfecting such a code and securing its adoption by the law-making power in each country, but the further diffi-

culty that even if enacted in uniform terms, as nearly as practicable in different languages, differences of interpretation would arise through variations in judicial decisions.

It has required some 16 years of organized effort to secure the adoption in 38 American States of the existing law of negotiable instruments. To undo this work by substituting a new code would not only involve great labor, but would cause confusion and variations of law during the time that the old code remained in force in some States after being superseded in others. For this reason it would seem to be advisable for the present conference to restrict itself in the main to certain principles and to the selection of those points for agreement in regard to which lack of agreement at the present time causes to commerce the most serious inconvenience.

#### A. THE BILL OF EXCHANGE.

##### I. ISSUE AND FORMS.

(Question 4.) In regard to the description of the bill of exchange, it is, of course, highly desirable that uniformity should prevail in order to give certainty to the essentials of a bill. In the case of those bills issued by banking houses dealing largely in foreign exchange the adoption of a standard form of bill would be acceptable and convenient. It would be contrary to American legal policy, however, to provide that bills not conforming in all respects to such a standard should be treated as lacking validity. While it has been recognized by the courts that certain elements were necessary to constitute a valid bill of exchange, the effort has usually been made to find in an imperfect document such evidences of intent of the parties as would permit the carrying out of a bona fide contract. The law of New York defining a negotiable instrument (N. I. L., sec. 20), which is also the law in 37 other States, is as follows:

SEC. 20. An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer;
2. Must contain an unconditional promise or order to pay a sum certain in money;
3. Must be payable on demand or at a fixed or determinable future time;
4. Must be payable to order or to bearer; and
5. Where the instrument is addressed to a drawee he must be named or otherwise indicated therein with reasonable certainty.

After various provisions defining more particularly what constitutes certainty as to sum, when promise is unconditional, and what constitutes determinable future time, provisions for the interpretation of an imperfect instrument are made as follows (N. I. L., sec. 25):

SEC. 25. The validity and negotiable character of an instrument are not affected by the fact that—

1. It is not dated; or
2. Does not specify the value given, or that any value has been given therefor; or
3. Does not specify the place where it is drawn or the place where it is payable; or
4. Bears a seal; or
5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

It is also provided (N. I. L., sec. 29) that—

The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

In their general spirit these provisions, which have the approval of American bankers, are supported by the following section of the rules adopted by the Budapest conference of 1908:

9. The bill of exchange shall not be invalid by reason that it is not dated or does not specify the place where it is drawn or the place where it is payable.

Under the head of certainty of the sum to be paid, a suggestion is made by American bankers which is not referred to specifically by the Questionnaire. This is to the effect that a provision for the payment of interest from date of acceptance should be permissible and should not in any way impair the negotiability of the bill. It is distinctly provided by the law of New York (N. I. L., sec. 21):

The sum payable is a sum certain within the meaning of this act, although it is to be paid—

1. With interest; or
2. By stated installments; or
3. By stated installments, with a provision that upon default in payment of any installment or of interest the whole shall become due; or
4. With exchange, whether at a fixed rate or at the current rate; or
5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

The law of certain countries of Continental Europe would appear to exclude the charge for interest as a usual incident of a bill of exchange and to have imperiled in some cases the collection of bills containing provisions for it.

(Question 5.) In regard to the character of bills of exchange which the law should permit, there appears to be no objection to the issue of a bill to bearer, to the order of the drawer, or for account of a third party, or to indicate a case of need.

In the matter of bills drawn for account of a third party, it is desirable that the nature of the obligation should be clearly set forth; but as drafts are frequently drawn on banks for account of their customers, the practice should certainly be allowed.

In respect to a case of need, the law of New York declares (N. I. L., sec. 215) that "It is in the option of the holder to resort to the referee in case of need or not, as he may see fit." There would seem, however, to be no objection in ordinary cases to making presentation to the referee obligatory, as is already the case in most countries of Continental Europe. And, inasmuch as bills are at times taken by the banks from the drawee direct, and at other times from and on the strength of the indorser, the indication of "case of need" should have the same effect, whether it emanates from the drawer or the indorser. Reference to the case of need should not, however, waive the obligation to protest, and the expenses incidental to such reference should be chargeable to the drawer.

The clause which excludes the option of indorsement (Rektawechsel) is not one which is used in America, or which, in the opinion of American bankers, is likely to appear on bills which are the subject of operations between the United States and other countries.

*Drafts drawn in sets—Copies.*

(Question 6.) The obligation of the drawer to furnish more than one draft of the bill of exchange appears to be a matter which can be safely left to agreement among the parties. The bank or other party negotiating the bill for the drawer is always in position to refuse the exchange, if desired, unless more than one draft is furnished. The security and rapidity of modern means of communication makes duplicate copies and sets less necessary than under earlier conditions. There appears to be no objection to the rule laid down on this subject at the Budapest conference of 1908:

21. There shall be no obligation to give a set or a duplicate without an agreement between the parties thereto.

But where a bill has been lost before it is overdue the person who was the holder of it shall be entitled to require of the drawer another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

No annulling clause need be inserted in duplicates if marked as such.

In the opinion of American bankers, where a first and second of exchange are drawn, the payee should be bound to pay immediately the first copy presented, unless there is agreement to the contrary. The acceptance, however, should be written on one part, and if an acceptor pays a bill without requiring the delivery of the accepted part and that part is outstanding at maturity, he should be liable to the holder.

The rights of a holder of an original draft or first of exchange should be the same as though no copy of the second of exchange had been issued. It should, however, be left to the discretion of the negotiating bank that where an original draft or first of exchange has been forwarded to another bank for the purpose of obtaining acceptance, to make the same subject to the call of the duly indorsed second of exchange, in which case, however, the original draft or first of exchange should go forward unindorsed, thus leaving the negotiating bank in the position of being the actual holder of the same.

(Question 7.) The law should regulate documentary drafts, in so far as to designate the form of bill of lading under which goods can be delivered and to prescribe that such delivery of goods shall not be permitted without the presentation of such bill. The law should define as far as practicable the form and nature of a valid consular invoice.

In relation to bills of lading as well as bills of exchange a greater degree of uniformity seems desirable in regard to the credit given to duplicates. As stated by certain American bankers, the laws of the Netherlands, Belgium, and Germany require that bills of lading and other appertaining documents be delivered in original and duplicate before acceptance or payment can be demanded. Under this rule, in the event of the loss of the first of exchange together with the documents the second of exchange is practically of no value, inasmuch as it is necessary in such case to secure an entirely new set of documents at the expense of considerable delay and difficulty. If the law could be so framed that the delivery of either the original or duplicate set of documents should be considered sufficient, the difficulties referred to would be largely removed. It would seem that

the proper delivery of one set of documents, whether original or duplicate, should suffice; but the drawee in such a case should be given the right to demand a guaranty from the holder, satisfactory to said drawee, that the other set of documents should be immediately delivered to him in case of their arrival.

## II. INDORSEMENTS.

(Question 8.) Uniformity in the form and effect of indorsements would be very acceptable to American bankers. There are at present differences between American law and that of some other countries which lead to confusion and misunderstanding as to the rights pertaining to certain forms of indorsement. The American law, as represented by the negotiable instruments law of the State of New York and 37 other States, prescribes that the signature of the indorser, without additional words, is a sufficient indorsement. It is even provided (N. I. L., sec. 36) that "where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;" and further (N. I. L., sec. 113) that "a person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity."

While the simplicity of this form of indorsement has a certain merit, there is no doubt much to be said in favor of the practice in some European countries of giving a date and place to each indorsement. The suggestion of such a requirement, as a means of giving certainty and ready negotiability to a foreign bill of exchange, would be favorably considered by American bankers and merchants, provided that the absence of such detail should not be construed as impairing the validity of the bill or its indorsements. The law of New York and other American States now provides (N. I. L., sec. 76) that, "except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated."

American opinion is strongly in favor of the practice of considering an indorsement in blank sufficient for making a bill negotiable, in accordance with section 8 of the Budapest rules of 1908. The general provisions of the negotiable instruments law of the State of New York in regard to the character and effect of indorsements are as follows:

SEC. 60. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder completed by delivery.

SEC. 61. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser without additional words is a sufficient indorsement.

SEC. 62. The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part it may be indorsed as to the residue \* \* \*.

SEC. 69. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition and make payment to the indorsee or



his transferee whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same or the proceeds thereof subject to the rights of the person indorsing conditionally.

SEC. 70. Where an instrument payable to bearer is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

Indorsement should be permitted in blank and by power of attorney, but the holder should be allowed, as under the New York law (N. I. L., sec. 65), to convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

Indorsement after maturity, in the opinion of American bankers and merchants and in accordance with American legal practice, should confer no better title than that which the holder had.

American opinion is strongly in favor of treating an indorsement as a negotiation of the instrument under the law merchant and treating guaranty as a separate and special contract, which must be clearly expressed and which may be governed by other rules than those of the law merchant.

If essential changes are to be made in the prescribed form of indorsement for foreign bills, it is suggested that standard forms of indorsement be drawn up in each of the principal commercial languages and incorporated in the law as enacted by the lawmaking power. Such definitions and forms should apply to indorsement in blank, indorsement by power of attorney, and indorsement subsequent to maturity.

### III. COVER.

(Question 9.) It does not appear to be the opinion of American bankers and merchants that a uniform law should contain any special provisions relative to the obligation of the drawer to provide cover or relative to the consequences resulting from fulfillment or default in this obligation. So far as provision for cover is a proper subject for contract it can properly be left to agreement between the parties. So far as failure to provide cover involves violation of civil or criminal law it is probably sufficiently provided for by existing statutes and judicial decisions in different countries. In the case of goods sold, where the bill of exchange is accompanied by a bill of lading, the goods themselves usually afford sufficient collateral security.

In case of the dishonor of a bill due to failure or bankruptcy special provision for cover would be of no effect unless bills were made a preferred claim upon the assets of the bankrupt, which would probably be found in most cases to be against national policy. Frequently, in case of dishonor, resort could be had under existing practice to the referee in case of need.

### IV. ACCEPTANCES.

(Question 10.) In order to give a bill of exchange an international character, capable of ready negotiation, it should be free from stipulations prohibiting or requiring acceptance. In certain cases, no doubt, the right to demand or not to demand acceptance may be left to agreement between the parties. There should apparently be no question, however, of the obligation of the holder to present the bill of

**exchange** for acceptance in all cases where it is desired to fix the liability of the acceptor, and especially in cases (a) when it is payable in another place than the domicile of the drawee, or (b) when it is drawn at sight or at so many days' sight, presentation in the latter case being necessary to fix the maturity of the instrument.

When a bill is accepted for payment elsewhere than at the domicile of the drawee, the holder should not be under obligation to present it to the drawee, but only at the place and to the person designated in the acceptance, and should have full recourse, in case of dishonor, against acceptor and indorsers, wherever domiciled.

(Question 11.) The acceptance should be in writing, signed by the acceptor. The effect of acceptance should be to bind the drawee. Under the law of New York a drawee is not bound until acceptance, as set forth thus:

**SEC. 211.** A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

Acceptance by separate document should be admissible in certain cases, especially where a general credit has been accorded and where it is not possible to present the bill itself promptly; but the holder of a bill should have the right to demand that acceptance be written on the bill itself when it can be presented for the purpose, and should be allowed to treat it as having been dishonored if it is not so accepted.

Promise of acceptance by separate document, even in advance of the drawing of a bill, is held by the law of New York to be acceptance, as follows:

**SEC. 223.** An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

Where acceptance is made by separate document it is a well-established principle of American law that subsequent holders can be bound only so far as they have notice of such a document. (N. I. L., sec. 222.)

In respect to the question whether the drawee should have the right to cancel his acceptance, so long as he has not delivered the bill of exchange or has not given notice to the holder of his acceptance, the majority opinion among American bankers appears to be that the drawee should have this right, especially for the purpose of correcting errors in the formal acceptance of checks. It is highly desirable that errors should be restricted as much as possible, since mutilation by the erasure of an acceptance might prejudice subsequent negotiation of the bill. It is not considered practicable to entirely deny this right, but American bankers would generally be willing to accept the rule laid down at the Budapest conference of 1908:

Where an acceptance is written on a bill, and the drawee has parted with the possession of it or had given written notice to, or according to the directions of, the person entitled to the bill, that he has accepted it, the cancellation of the acceptance shall be of no effect.

(Question 12.) On the subject of refusal to accept American bankers believe that absolute declination of acceptance should constitute a refusal and the bill should be treated as dishonored. Should a drawee, however, upon presentation of a bill, ask to have it presented again later in the day or on the following day, such a state-

ment or request should not be deemed to constitute a refusal if no further demand is made by the holder. If accepted, however, acceptance should date from the day of original presentation. This is in accordance with the law of New York (N. I. L., sec. 224) :

The drawee is allowed 24 hours after presentment in which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation.

As stated early in this memorandum, it would probably facilitate business by preventing dishonor and protest in certain cases, if it were permissible to delay protest, without releasing any of the parties, until the day following presentation, whether refusal were made on the day of presentation or on the day following.

The question against whom the holder of a bill of exchange shall have recourse, in case of the dishonor of a bill, is one which is resolved by American law in favor of the option of the holder; that is, he may begin legal process against any one or all of the previous indorsers, against the drawer of the bill, or against previous indorsers and drawer.

In the opinion of American bankers, those against whom recourse is exercised should be compelled to make immediate payment and should not have the choice of giving bond, unless by special agreement with the holder of the paper. In other words, the obligation of drawer and indorsers to pay at once, in conformity with their liability, should be subject to no impairment, except by consent of the holder of the bill.

(Question 13.) Upon the question whether the law should accord special rights to the holder of a bill of exchange, in case of the failure or insolvency of the acceptor or of the drawee, the view of American bankers would be adverse to any such special rights except in certain classes of cases. Such cases might arise, where the equities could be best preserved by eliminating an acceptor bank, or where a bank holding a bill for payment had no real equities in the goods and could be eliminated from the transaction with greater justice to the parties. If cases of this kind could be dealt with by proper legislation, it would increase the security of bills and the facility of mercantile transactions.

(Question 14.) Acceptance by intervention should, in the opinion of American bankers, be binding only by agreement among the parties. Such intervention by agreement should be permitted by the maker or any indorser or by both, if in such form as to obligate the party intervening in the same manner as the drawee. Obviously, acceptance by intervention should not be allowed to release the drawee, unless with the consent of the drawer and others bound by indorsement.

#### V. GUARANTY BY THIRD PARTY.

(Question 15.) The American law recognizes guaranty, as distinct from indorsement, and American bankers regard the practice as of considerable value in financing exports of merchandise. As guaranty is, however, in the nature of a contract outside the law merchant, it is felt that the regulation of the subject may properly be left to local law.

## VI. MATURITY.

(Question 16.) In reference to provisions of law in regard to the maturity of bills of exchange, American bankers and merchants are interested chiefly in having a law which makes the date of maturity certain. As a step in this direction they generally favor the abolition of days of grace and definite provision that bills falling due on banking holidays shall be payable on the first business day following. They agree with the rule adopted at the Budapest conference of 1908 that usances should be abolished.

It is felt that, in view of the promptness and certainty of modern means of communication, the reason for allowing days of grace has largely disappeared and that a bill payable a certain number of days after sight should be payable at the termination of the period designated without any additional allowance of time. If a party selling goods desires to give the purchaser six days' notice before he is called upon to pay his bill it is just as convenient to draw the bill payable six days after sight as to draw it at three days after sight, with the expectation that advantage will be taken of three days of grace. The abolition of days of grace, by introducing greater certainty into the law, would give to a draft payable at sight the character of ready convertibility which it purports to possess, while it would leave the agreement between buyer and seller the exact time to be allowed for making payment.

Sight bills, in the opinion of American bankers, should be paid at sight or refused, and protest should follow refusal to accept or to pay within the limit of the first day after presentation, as set forth in the discussion under question 12.

(Question 17.) Payment should be demanded, in the opinion of American bankers and merchants, at a reasonable hour on the day of maturity. The general provisions of the New York law and of 37 other American States in regard to presentment for payment are as follows (N. I. L., secs. 132-135):

SEC. 132. Presentment for payment, to be sufficient, must be made—

1. By the holder, or by some person authorized to receive payment on his behalf.

2. At a reasonable hour on a business day.

3. At a proper place as herein defined.

4. To the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made.

SEC. 133. Presentment for payment is made at the proper place—

1. Where a place of payment is specified in the instrument, and it is there presented.

2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument, and it is there presented.

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment.

4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

SEC. 134. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

SEC. 135. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

It is the view of American bankers that checks drawn upon bankers should be presented with only reasonable delays and should be paid

at sight, without previous notice. The same rule should apply to bills of exchange with a fixed maturity in presentment for acceptance, but in the case of bills payable at sight a reasonable time should be allowed after each negotiation before presentment is required. No definite limit is fixed by American law, as in the case of some European countries, as to the time within which checks should be presented in order to be payable.

In the matter of payment before maturity, such payment should be permissible in the case of a clean bill, when it includes principal, interest, and other proper charges to date of maturity. In case a rebate of interest or charges is desired, payment before maturity with rebate should be permissible only with the consent of the holder. In the case of drafts accompanied by documents, to be given up only on payment by the drawee, the practice, now common, of permitting payment in advance, subject to a rebate of interest, should be admissible, but in the opinion of American bankers can probably be provided for better by mutual agreement than by law.

The question whether, except for a contrary stipulation in a bill of exchange, payment may be made in money or in bank notes having a legal circulation at the place of payment, raises some important political and economic questions, as well as those which are legal and commercial.

It would be highly desirable for the security of commercial operations that all bills of exchange should be discharged in the standard metallic money of the country in which they are made payable. From a political point of view, however, it might be found impracticable in some cases to continue permanently the payment of bills of exchange upon the basis of the metallic standard if specie payments had been suspended and the current money of domestic use was paper which had become depreciated in metallic value. It would seem, however, to be eminently proper that bills accepted prior to the suspension of specie payments or the depreciation of the paper currency should be payable in the money in actual use at the time of acceptance. In other words, the contract embodied in a bill of exchange at the time of acceptance should be faithfully executed, even though bills accepted after the suspension of specie payments and after the beginning of the depreciation of the paper currency should be payable in that currency. If the powers participating in the conference were willing to legislate upon this subject, they would perhaps be willing to provide that bills accepted in the currency of a given country, while the currency of that country was at par with its metallic standard and before any change of monetary policy, should be payable in standard money, or in exchange equivalent to the value of such standard money, for a definite period after the suspension of specie payments, but that bills drawn after the legal or practical recognition of specie suspension or *cours forcé* should be payable in the local currency of the country, without regard to its fluctuations in metallic value, unless they expressed upon their face a specific and special contract to the contrary. Where contracts are customary for payment of bills at their gold value or in sterling, no new legislation is required on the subject.

Upon questions of commercial practice in paying bills, where the question is not that of adherence to the metallic standard, it is the opinion in the United States that the law should provide that, in the



absence of other stipulation on the face of the instrument, bills of exchange drawn in a currency other than that of the country of payment, should be paid at the selling rate for bankers' checks and not at the buying rate.

Upon the question whether the law should concern itself with partial payment of a bill of exchange, the opinion of American bankers appears to be that some provision on the subject would be desirable. Partial payment should not be valid, in the opinion of the majority of American bankers, unless acceptable to the drawer. If such payments are admitted under any other condition they should be accepted by the payee without prejudice to the legal rights of holders to recover the balance with damages. It seems important to reserve to the holder this right to damages in order to prevent the unscrupulous use of a provision for partial payment to the detriment of parties to the bill.

Partial payments should be permitted also prior to maturity, if agreed upon between the holder and the drawee, but should not be permitted to release the drawer or the indorsers as to the remainder.

#### VIII. PAYMENT BY INTERVENTION.

(Question 18.) Payment by intervention at maturity is described by the law of New York and other American States as "payment for honor." The form and manner of such payment are defined by the New York law, but the process itself is rare in American banking practice. Under the New York law (N. I. L., secs. 300-306) intervention is permitted by any person after a bill has been protested for nonpayment, for the honor of any person liable thereon, or for the honor of the person for whose account it was drawn. In order to distinguish such a payment from a mere voluntary payment it must be attested by a notarial act of honor, which may be appended to the protest or form an extension of it. This material act is defined thus by the New York law:

SEC. 302. The notarial act of honor must be founded on a declaration made by the payer for honor, or by his agent in that behalf, declaring his intention to pay the bill for honor and for whose honor he pays.

The effect of payment for honor upon the rights of the various parties is thus defined by the New York law:

SEC. 304. Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for and succeeds to both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

SEC. 305. Where the holder of a bill refuses to receive payment *supra* protest, he loses his right of recourse against any party who would have been discharged by such payment.

SEC. 306. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

In view of the rarity of the use of intervention or payment for honor in American practice, there is a disposition on the part of American bankers to defer to the views of other countries if no change is proposed which would interfere with the operation of the law in other respects.

## IX. RECOURSE OF HOLDER.

(Question 19.) In respect to the formalities to be fulfilled by the holder of a bill of exchange as the condition of the right of recourse, American bankers are disposed to accept the rule laid down by the Budapest conference of 1908, as follows:

18. Protest, or noting for protest, according to the law of the country, shall be necessary to preserve the right of recourse upon a bill of exchange dishonored for nonacceptance or for nonpayment.

Properly interpreted, American bankers are generally willing to be bound by the next following rule adopted by the Budapest conference, as follows:

19. Immediate notice of dishonor must be given; if it be not so given, the party sued shall be discharged to the extent of the loss or damage caused by the want of such notice.

The holder should, in the opinion of American bankers, present the bill for acceptance and payment within a reasonable time or should forward it to his collection agent within a reasonable time. Presentation should be made in accordance with the law and the terms of the bill and, in case of refusal, protest should be made for nonacceptance or nonpayment, as the case may be.

Notice of default in payment should be given as quickly as possible to previous indorsers and to the drawer. Such notice, to be within the time to bind the obligors, should be such a reasonable interval as would permit delivery of the notice by mail. Advice of refusal by cable should be a subject of agreement rather than impose any legal obligation.

(Question 20.) The object of recourse, in the opinion of American bankers, is to obtain payment in full, including expenses, interest, and commission.

(Question 21.) In respect to the order in which the different individual indorsers become liable to recourse, American practice, which is satisfactory to American bankers, is in conformity with rule 14, as laid down by the Budapest conference of 1908, which is as follows:

In case of dishonor for nonacceptance or for conditional acceptance, the holder shall have an immediate right of action against the drawer, the indorsers, and any other parties liable for payment of the amount of the bill and expenses, less discount.

There is also a disposition in the United States to accept the more specific provisions of the further rules of the Budapest conference of 1908, which were expressed as follows:

22. The holder of a bill of exchange shall not be bound in seeking recourse by the order of the succession of the indorsements nor by any prior election.

23. A simultaneous right of action on a bill of exchange shall be allowed against all or some or any one of the parties to the bill.

These rules are in harmony with the negotiable-instruments law of New York and other American States, which do not, as in some countries of Europe, restrict recourse to holders in the inverse order of their indorsements.

(Question 22.) The correct rule in case of default, in the opinion of American bankers, is that the drawer or any of the indorsers should pay immediately upon presentation the unpaid draft, with protest attached. The same rule should apply to both the indorsers and the drawer.

## X. LOSS OF A BILL OF EXCHANGE.

(Question 23.) In regard to the rights of parties in case of the loss of a bill of exchange, American bankers are disposed to accept the policy laid down by the Budapest conference of 1908, as expressed in rule 25:

The owner of a lost or destroyed bill of exchange has, upon giving security, a right to payment of the bill by the acceptor, and the same right against the drawer as he would have had, if the bill had not been lost or destroyed.

It is felt, however, by American bankers that the acceptor should not be required to make payment unless the security given by the purported holder is satisfactory in character to the acceptor.

(Question 24.) American bankers are not generally in favor of the process of Amortisations-Verfahren.

(Question 25.) In regard to the position of the holder of a lost bill of exchange who proves his ownership, it would seem that he should be authorized to charge back the item to the next previous indorser until it reached the maker, provided the maker in the first instance should refuse to issue a duplicate, except in the case where the bill had been accepted by the holder without recourse. The question of liability under a bond should also revert back to the maker of the bill unless the chain of liability should be broken through the acceptance by one of the indorsers without recourse, in which case it should go back to such parties.

On the subject of the loss of parts of a bill drawn in sets it is the opinion of American bankers that if one bill of a set is paid in good faith, in the regular course of business, and apparently in order and without notice of any defect, the drawees should be released.

Although the law should provide for the payment of the first part of a set presented, the drawees should have the right to demand that the part upon which the acceptance was actually written should be surrendered to them. It might, with justice, be required that holders presenting an unaccepted part at maturity for payment should furnish the drawees with a written, and, if necessary, a sworn statement, as to the reason why the unaccepted part is presented in place of the duly accepted part, and, further, furnish an appropriate guarantee for the surrender of the properly accepted part with the least possible delay after the obstacles preventing the presentation of the duly accepted part shall have been removed.

In the case of the holder of the lost instrument, if not issued in a set, he should be free to demand a new instrument with all prior indorsements, and where a duplicate can not be obtained he should have the right to enforce payment upon delivery of a proper bond.

In the case of the loss of one of a set the holder should take his chance of recovery from the parties who may fraudulently secure payment upon one of the remaining parts.

## XI. DEFECTS OF FORM—SUBSTITUTIONS.

(Question 26.) The American courts have usually been disposed to view leniently defects of form in a bill of exchange which did not deprive of certainty its meaning and effect and to permit omissions to be rectified in accordance with the purpose of the instrument. While permitting the completion of a bill in this way, such comple-

tion has necessarily been subject to external evidence as to whether it complied with the purpose of the drawer of the bill or exceeded the authority granted by him to the person filling out the blanks. These questions, however, have usually been decided in the American courts under the common or statute law and not absolutely according to the law merchant. American experience on the subject has been embodied in three sections of the negotiable instruments law of the State of New York, as follows:

**SEC. 32.** Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

**SEC. 33.** Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

**SEC. 34.** Where an incomplete instrument has not been delivered, it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder as against any person whose signature was placed thereon before delivery.

## XII. FORGERY.

(Question 28.) The obvious effect of forgery, in the opinion of American bankers and lawyers, is to constitute absence of contract between parties where a forged indorsement intervenes. Each signer of a negotiable contract under the law merchant undertakes to pay to anyone who acquires title according to the law merchant. In the absence of title acquired in this manner, the paper is not negotiated according to the law merchant, which requires, not that every intervening holder between plaintiff and defendant should have been owner of the instrument or even the lawful holder of it, but that every intervening indorsement of an owner should be genuine. The holder may have a good claim against indorsers subsequent to the forged indorsement, but can not go behind the latter, for want of assent on the part of the signers. There are cases, of course, where a party is estopped from setting up forgery. These rules are summed up in the New York law as follows (N. I. L., sec. 42):

Where a signature is forged or made without authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such a right is precluded from setting up the forgery or want of authority.

A material alteration of the contents of a bill by the holder should discharge all parties who do not consent thereto from liability on the bill.

## XIII. PROTESTS.

(Question 29.) It would be highly advantageous, in the opinion of American bankers and merchants, to have a prescribed form of protest, expressing in each language, respectively, the essential facts required to constitute a valid protest. It would also be desirable to have the law prescribe a uniform manner of protest so far as this can be done without departing too radically from existing legal methods in various countries.

Allowance for failure to make protest within the required time as the result of force majeure should be made. This principle is generally recognized by American law. On this subject it is declared by the New York law (N. I. L., sec. 267) :

Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

American practice has been opposed to protests through the post office as not involving sufficient certainty of adequate notice to the party liable, but possibly provision might be made for protest in this form where the signature to a registry card or notice indicated that such protest had been received.

## XIV. LIMITATION.

(Question 30.) In regard to the time limitation for beginning suits, there is a feeling among American bankers that the limit fixed by the English law and by that of many American States, which is six years, is reasonable. The proposal of the Budapest conference (rule 26), that "the limitation of actions upon bills of exchange against all the parties shall be 18 months from the date of the maturity of the bill," is considered short for many classes of cases which may arise. Bills drawn on oriental countries, for instance, sometimes present cases of delay and difficulty consuming much time before conditions reach the point where the parties feel disposed to begin suit.

There is apparently no reason why the time limit should differ as against the acceptor or against the drawer or indorser.

(Question 31.) The time from which the limitation should be calculated should, in the opinion of American bankers, be from date of acceptance, in the case of the acceptor, or from date of protest for nonacceptance.

Against the drawer and the indorser, the time should be calculated from the date of the sending of the notice of dishonor. This is considered preferable to the English rule, which dates the time from receipt of notice by drawer or indorser, because this permits controversy as to whether notice was received.

(Question 32.) American opinion generally favors the release of all parties after the time limitation has expired. There are classes of cases, however, in which a party who has lost his recourse, owing to the time limit, might be entitled to the right to summon the alleged debtors into court and cause them to swear that they have not enriched themselves through the limit having expired.



**B. PROMISSORY NOTES.**

(Question 33.) The law governing the form of promissory notes should provide that the maker of a note should be placed in the same position as the acceptor of a bill of exchange and the first indorser of a note in the position of the drawer of an accepted bill payable to his order, except that provisions as to acceptance would not be necessary.

(Question 34.) The general provisions regarding negotiable instruments should apply both to bills of exchange and to promissory notes, so far as they are applicable, as to form and interpretation, consideration, negotiation, the rights of holders, presentment, notice of dishonor, discharge, and other particulars.

(Question 35.) It does not appear to be necessary to make many separate provisions of law regarding notes, apart from those made for bills of exchange, but some differences will arise from the nature of the differences between the two instruments. A promissory note, for instance, if negotiable, can not be made conditionally, while a bill may be accepted conditionally.

**C. PRIVATE INTERNATIONAL LAW.**

(Question 36.) It is desirable that private international law should continue to recognize several rules which have already been applied in many adjudicated cases. One of these, relating to the legal rights of the signers of a bill, is correctly set forth by rule 1 of the Budapest conference of 1908 in the following terms:

The capacity to contract by means of a bill of exchange shall be determined by the general capacity to enter into a contract; but a person, although incapable of binding himself by such a contract in his own country, shall also be bound, if he is capable of so binding himself, under the law of the country in which he contracts.

It may be added that American decisions have treated more leniently the capacity to transfer a negotiable instrument as a holder than the capacity to make or draw such an instrument. If the incapacity, aside from that of a married woman at common law, is merely legal, as in the case of an infant possessed of full mental capacity, or of a corporation, the title may be passed in favor of any subsequent holder against other parties than the infant or corporation whether the transfer is by indorsement or not.

In respect to the form of the obligation contracted by the signing of a bill of exchange or a promissory note, American opinion is strongly in favor of determining such obligation by the law of the place where the contract is made, the same rule applying to the separate contracts arising from indorsement or acceptance.

In respect to the formalities to be fulfilled with reference to a bill of exchange or a promissory note to protect the rights which result from it, American opinion is in favor of conforming these formalities also to the law of the place where default occurs and considering such formalities as binding upon all parties.

CHARLES A. CONANT,  
*Delegate of the United States.*

## II.—STATEMENT OF THE AMERICAN DELEGATE AT THE THIRD PLENARY SESSION (JUNE 25, 1910).<sup>1</sup>

M. Conant fait au nom de son Gouvernement la déclaration suivante:

Le Gouvernement des Etats-Unis est d'avis de prendre toutes les mesures susceptibles de rendre plus commode et d'entourer de nouvelles garanties l'emploi des effets de commerce. Il n'entre point dans les attributions du Gouvernement fédéral de légiférer sur des questions qui appartiennent par leur nature au droit privé, mais seulement d'édicter en pareille matière des règles applicables, soit aux contestations entre citoyens des différents Etats de l'Union, soit aux contestations entre sujets des Etats-Unis et sujets des autres pays; ces litiges ressortissent en effet aux Tribunaux Fédéraux.

Le monde des hommes d'affaires américains n'en est pas moins pénétré de l'intérêt que présenterait l'unification de la législation sur les effets de commerce; cette impression s'est traduite jusqu'à ce jour par la mise en vigueur dans trente-sept Etats et Territoires de l'Union—sur un total de quarante-six Etats et de deux territoires—de divers textes qui tous s'inspirent d'un projet de loi sur les instruments d'échange négociables, élaboré par une commission pour l'unification des lois. Ces textes sont identiques quant aux grandes lignes. Ils présentent des divergences de détail qui résultent des habitudes locales et de la politique particulière suivie par chaque Etat dans le domaine social, mais les règles fondamentales concernant la forme, les conditions de validité et la négociation des effets ne diffèrent pas sensiblement. La première en date de ces lois a été votée par la législature de l'Etat de New-York en 1897; elle a été adoptée telle quelle, au cours des deux dernières années seulement, par plusieurs autres Etats.

Ces faits ont été cités pour les deux raisons que voici: d'une part, afin de préciser la situation dans laquelle se trouve le délégué américain: ce dernier doit agir par l'intermédiaire du ministère des affaires étrangères, et ne peut que recommander, sans plus, à chacun des Etats de l'Union individuellement, la mise en vigueur des lois qui lui paraissent désirables. Et, d'autre part, en vue de donner une idée du temps et de la somme de travail considérable qu'il a fallu employer pour parvenir à l'uniformité relative qui caractérise aujourd'hui la législation américaine sur les effets de commerce.

On conçoit, dès lors, sans peine que le délégué des Etats-Unis assumerait une responsabilité très lourde et entreprendrait un travail difficilement réalisable en peu de temps s'il s'associait à la proposition de substituer une nouvelle réglementation à la législation présente sur les instruments d'échange négociables; il en serait de même s'il proposait une modification radicale de la pratique courante qui s'est établie sous l'empire de cette législation.

Etant donné le point de vue auquel se placent, d'une part, les commerçants et les banquiers américains, de l'autre, le Gouverne-

<sup>1</sup> The translation of this statement and of the next following into English will be found in the proceedings of the conference.

ment des Etats-Unis, l'adoption d'une telle ligne de conduite entraînerait diverses conséquences fâcheuses. La période transitoire entre les deux régimes, ancien et nouveau, inévitablement marquée par une extrême confusion, serait assurément de longue durée, puisqu'il n'a pas fallu moins de treize ans pour obtenir la mise en vigueur des dispositions actuelles dans trente-sept Etats et Territoires de l'Union. Mais en outre, cette manière de procéder susciterait dans les cours et tribunaux les difficultés d'interprétation qui s'élèvent toujours lors de l'application de lois faisant table rase des textes anciens et de la jurisprudence antérieure.

La largeur de vues et l'esprit de conciliation dont ont fait preuve les distingués représentants de l'Allemagne, de la Belgique, de la Suisse, et de la République française, cette digne sœur de la République américaine, leur ont conquis l'entière sympathie du délégué des Etats-Unis, comme aussi, sans doute, celle de toute la Conférence. Si l'on pouvait obtenir une uniformité relative de la législation et des usages concernant les effets de commerce, au moins dans les nombreux Etats de l'Europe continentale, un grand pas serait déjà fait dans la voie des encouragements au commerce international; il en serait ainsi, quand bien même des différences continueraient à subsister entre le régime de l'Europe continentale d'une part, celui de la Grande-Bretagne, des colonies britanniques et des Etats-Unis de l'autre.

Il y a dans la pratique européenne, spécialement en matière d'effets internationaux, différentes mesures qui seraient susceptibles d'être acceptées par les banquiers américains, si seulement elles pouvaient devenir des règles communes aux principales nations commerçantes. Certaines prescriptions, figurant déjà dans l'acte britannique de 1882 et concernant les conflits de lois, n'ont pas été reproduites dans les lois des Etats américains; elles pourraient être introduites dans ces dernières à titre d'additions sans entrer véritablement en opposition avec elles.

Le délégué des Etats-Unis est disposé à conférer sur ces différents sujets avec les représentants des autres Gouvernements dans la mesure la plus large; mais il préfère ne pas entrer en ce moment dans le détail de la discussion d'une loi uniforme; les Etats américains ne pourraient substituer cette loi à leur réglementation actuelle sans troubler l'uniformité relative qui a pu être établie entre le régime des différents Etats de l'Union et celui d'autres nations importantes par leur trafic commercial.

III.—STATEMENT OF THE AMERICAN DELEGATE AT THE SIXTH  
PLENARY SESSION (JULY 21, 1910).<sup>1</sup>

M. Conant:

*Monsieur le Président, Messieurs*,—C'est de tout cœur que je joins mes félicitations à celles que plusieurs de mes collègues ont adressées au comité central et à ses rapporteurs au sujet du projet de loi, également remarquable par sa valeur intrinsèque et par son ampleur, qui vient d'être soumis à l'appréciation de la conférence.

Sur beaucoup de ses points ce projet reproduit les dispositions édictées par les lois de la Grande-Bretagne et des Etats-Unis, deux pays, qui, il y a bien des années, ont pris une louable initiative en cherchant à rendre uniformes les lois relatives au droit de change, en vigueur dans les divers Etats de l'un et dans les différentes colonies de l'autre.

En prescrivant la suppression des jours de grâce et l'extension du délai accordé pour faire dresser protêt, vous avez donné votre adhésion à deux réformes que les banquiers américains seront tout particulièrement disposés à accepter.

Comme j'ai eu l'honneur de vous l'exposer au cours de ma déclaration lue au début de nos réunions, il répugnerait beaucoup au législateur américain d'avoir à défaire le long et pénible travail grâce auquel l'uniformité du droit de change a pu être réalisée dans trente cinq Etats et quatre Territoires de l'Union, ainsi que dans la Grande-Bretagne et ses dépendances. Sur certains points, la portée et le caractère des lois américaines diffèrent de la portée et du caractère des textes en vigueur dans l'Europe continentale. Nous n'avons point de code de commerce distinct des lois générales; nous ne faisons aucune différence suivant que le tireur ou le signataire d'un effet sont ou non des commerçants; enfin nous n'avons point de tribunaux spéciaux appelés à connaître exclusivement des affaires commerciales. Dès lors, il nous serait plus difficile d'entreprendre l'adoption d'une loi uniforme qu'il ne le serait dans des pays où l'existence d'un code de commerce distinct de la loi civile a servi de base à une longue série de textes et de coutumes.

La difficulté qu'a présentée la confection d'un projet de loi uniforme ressort clairement de ce fait que, malgré leur habileté consommée, vos distingués rapporteurs se sont vus contraints de s'en remettre à la législation ou à la pratique de chaque pays, ou aux prescriptions du droit civil proprement dit, en ce qui concerne vingt-trois points des différents articles du projet.

La réalisation de l'uniformité du droit de change se heurte aux Etats-Unis à un nouvel obstacle: ainsi que l'a décidé la plus haute juridiction du pays, le Gouvernement Fédéral n'a pas qualité pour édicter des règles législatives concernant les effets de commerce, nationaux ou internationaux. Ces documents sont regardés comme présentant le caractère d'actes contractuels et soumis comme tels

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<sup>1</sup> See note to next preceding statement.

aux lois des Etats particuliers; les Tribunaux fédéraux n'ont donc à s'en occuper que s'il surgit dans un cas particulier un conflit entre les lois de plusieurs Etats, fait qui exige l'interprétation des textes et un arbitrage entre leurs dispositions.

Je ne m'arrêterai point aux difficultés que présente la collaboration sans restriction des Etats-Unis, à la réalisation d'une loi uniforme sur le droit de change. Mais je tiens à déclarer que j'aurai grand plaisir à porter à la connaissance du Gouvernement Fédéral le projet qui sortira des travaux de la conférence, et à attirer sur ce dernier l'attention des associations américaines qui ont déjà déployé tant d'efforts, d'ailleurs fructueux, en vue de rendre uniforme la législation des différents Etats de l'Union. Je suis fondé à vous affirmer que ces associations examineront avec beaucoup d'attention ce projet, en vue de lui emprunter celles de ses dispositions qui, n'étant pas incompatibles avec notre système de lois et notre pratique commerciale, seraient de nature à modifier dans un sens favorable les prescriptions législatives actuellement en vigueur.

Je tiens à donner à votre excellence et à mes collègues l'assurance de la sympathie avec laquelle le Gouvernement des Etats-Unis envisage l'effort que tente actuellement la conférence en vue de jeter bas les barrières que l'enchevêtrement des lois en conflit a dressées contre le libre mouvement des affaires et des capitaux.



## APPENDIX C. PAPERS OF THE BRITISH DELEGATION.

### I. REPLY TO THE QUESTIONNAIRE.

No. 10.]

*Sir Edward Grey to Baron Gericke.*

FOREIGN OFFICE, *March 22, 1910.*

SIR: With reference to the memorandum which M. van der Goes was good enough to communicate to me on the 15th October last respecting the proposed international conference on the laws relating to bills of exchange, and which was accompanied by a Questionnaire, designed to elicit the views of the several States represented at the conference, on the various points which might arise for discussion, I now have the honor to transmit to you a memorandum in response thereto.

You will have learned from my note of the 5th July, 1909, that in the opinion of His Majesty's Government valuable results would be more likely to ensue from the labors of the conference if it devoted itself in the first place to ascertaining the various points on which the laws of the countries represented were already in agreement and those on which they differed, so as to pave the way for the subsequent adjustment of those differences. For the same reason His Majesty's Government feel that the greatest assistance they can now give to the work of the delegates will be to give their answers to the Questionnaire in the shape of a succinct statement of the law and practice in force in this country on each point. The accompanying memorandum has accordingly been framed on that basis; annexed to it will be found a copy of the code in which the law in this country on bills of exchange was embodied in 1882.

Should it be the desire of the Netherlands Government to circulate the inclosed memorandum to the other Governments participating in the conference, I have the honor to request that the reasons given in the present note for limitation of its scope may be circulated at the same time.

I have, etc.,

E. GREY.

[Inclosure in No. 10.]

MEMORANDUM OF HIS BRITANNIC MAJESTY'S GOVERNMENT, IN RESPONSE TO THE "QUESTIONNAIRE" OF THE NETHERLANDS GOVERNMENT, INDICATING THE RULES NOW IN FORCE IN THE UNITED KINGDOM.

Question 1. From the point of view of the United Kingdom it is difficult to discuss the law of bills of exchange apart from the law relating to checks, because a check is a bill of exchange with certain peculiar incidents of its own.

A check is defined by the bills of exchange act as a "bill of exchange drawn on a banker payable on demand."

The code then specifies certain rules which are applicable only to checks, but subject to those rules the ordinary law relating to bills of exchange applies to checks. (Bill of exchange act, sec. 73.)

Question 2. Having regard to the form of acts of Parliament in the United Kingdom, and to the fact that there is no line of demarkation between mercantile law and the ordinary common law, it would be impracticable to assent to any model law; only uniformity of principle could be aimed at.

Question 3. It would be convenient if the various commercial nations could agree on settling conflicts of laws on uniform principles, but it is difficult to confine such settlements to a single subject such as bills of exchange.

Question 4 (a). The law of the United Kingdom on bills of exchange does not require a bill of exchange to state on its face that it is a bill of exchange, and with the exception of bills of exchange drawn in a set, the word "exchange" does not appear in practice.

It is an essential principle of the law that the substance and not the form of an instrument should be considered. (Cf. sec. 3 of bills of exchange act, which enumerates the essentials of a bill.)

Question 4 (b). A bill of exchange need not specify the value given, or that any value has been given therefor, the reason being that the law raises a presumption of value. (Bills of exchange act, sec. 3, subsec. 4.)

Question 4 (c). The rule of *distantia loci* does not prevail in the United Kingdom, and, indeed, is expressly negatived by the provision that a bill need not specify the place where it is drawn or the place where it is payable. (Bills of exchange act, sec. 3, subsec. 4.)

Question 5 (a). A bill of exchange may be drawn payable to "bearer." (Bills of exchange act, sec. 3, subsec. 1.)

Question 5 (b). A bill of exchange may be drawn payable to the order of the drawer, and it may even be drawn payable to the order of the drawee. (Bills of exchange act, sec. 5, subsec. 1.)

Question 5 (c). A bill of exchange may be, and very often is, drawn for the account of a third party. (Cf. bills of exchange act, sec. 68, subsec. 1, as to payment for the honor of such party.)

Question 5 (d). A bill of exchange may indicate a referee or referees in case of need ("besoin"). (Bills of exchange act, sec. 15.)

Question 5 (e). It is in the option of the holder to resort to a referee in case of need or not, as he thinks fit, and it is immaterial whether the referee has been indicated by the drawer or by an indorser. (Bills of exchange act, sec. 15.)

Question 5 (f). The clause "retour sans frais" or any equivalent is recognized in England. The code provides that the drawer or any indorser may insert an express stipulation waiving, as regards himself, some or all of the holder's duties. (Bills of exchange act, sec. 15.)

In some countries the clause "retour sans frais" inures for the benefit of all subsequent indorsers. In the case of a bill so indorsed in a foreign country the like effect would probably be given to it in the United Kingdom. (Bills of exchange act, sec. 72, subsec. 2.)

Question 5 (g). The law recognizes an indorsement with the clause "sans garantie" or "sans recours," or any similar terms. (Bills of exchange act, sec. 16, subsec. 1.)

Question 5 (h). A bill may be drawn payable to a particular person only, and a bill may be indorsed payable to a particular person only so that he can not further indorse it. (Bills of exchange act, sec. 8, subsecs. 1 and 4.)

Question 6 (a). The act is silent as to the duty of the drawer to draw a bill in a set. It is left as a matter to be arranged between the parties themselves.

Question 6 (b) and (c). No special form is prescribed, but each part of the set must be numbered and must contain a reference to the other parts. If this be not done, and the different parts get into the hands of different holders in due course, each part constitutes a separate bill and can be enforced as such.

So, too, if the drawee accepts two parts of a set, and those parts get into the hands of different holders in due course, the acceptor is liable on both. (Bills of exchange act, sec. 71.)

Question 6 (d). "Copies" of bills of exchange drawn and negotiated in the United Kingdom are not customary, but if any question arose in the United Kingdom regarding a copy made abroad it would be determined in accordance with the law of the place where the copy was made. (Bills of exchange act, sec. 32, subsec. 1, and sec. 72, subsecs. 1 and 2.)

**Question 7.** Documentary bills are very common in certain trades in the United Kingdom, but the law does not specifically deal with them, and the parties are left to make their own arrangements with regard to them without any interference on the part of the law.

**Question 8 (a).** The indorser of a bill may indorse it in any form he likes to adopt. The indorsement may be absolute, conditional, or restrictive. (Bills of exchange act, secs. 32, 38, and 35.)

Ordinarily an indorsement transfers the property in the bill and guarantees its payment to the holder, but by the use of appropriate words the indorser may either exclude his liability while transferring the property or may guarantee payment of a bill in which he has no property. (Bills of exchange act, secs. 15 and 56.)

**Question 8 (b).** The simple signature of an indorser operates as an indorsement in blank and makes the bill payable to "bearer," giving the bearer all the rights of an indorsee under a special indorsement. (Bills of exchange act, secs. 1 and 6, and sec. 34, subsec. 1.)

**Question 8 (c).** The law recognizes procuration indorsements. (Bills of exchange act, sec. 25.)

**Question 8 (d).** A bill of exchange may be indorsed after maturity, but where a bill is indorsed after it is overdue the holder can not acquire or give a better title thereto than that of the person from whom he took it. (Bills of exchange act, sec. 36, subsecs. 1 and 2.)

**Question 9.** The law leaves it to the parties concerned to make their own arrangements as to the value ("provision") to be furnished to the drawee or acceptor; if, however, the bill has been accepted, the acceptor is bound to pay a holder for value. (Bills of exchange act, sec. 28.) The general view of the law is that a bill of exchange constitutes a form of commercial currency and does not necessarily imply the payment of a mercantile debt.

**Question 10 (a).** Where a bill is payable after sight, or where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment. In all other cases the holder is under no obligation to present for acceptance, though he would naturally do so for his own protection. If a bill does not fall within one of the above classes, it might be drawn in the form "pay without acceptance," but this is most unusual. (Bills of exchange act, sec. 39.)

**Question 10 (b).** A bill drawn payable at sight does not require acceptance, but a bill drawn payable after sight does require it.

**Question 11 (a).** The acceptance must be on the bill itself, and not on a separate document. The simple signature of the drawee on the bill amounts to an acceptance. (Bills of exchange act, sec. 7, subsec. 2.)

**Question 11 (b).** An acceptance may be either absolute or qualified (i. e., conditional, partial, or to pay only at a particular place), but the holder is not bound to receive the qualified acceptance, and if he elects to take it he may lose his recourse against the drawer and indorsers unless they have authorized or subsequently assent to the qualification. (Bills of exchange act, sec. 19; and note sec. 44, subsec. 2, as to partial acceptances.)

**Question 11 (c).** The drawee may cancel his acceptance unless he has delivered it to the holder or notified the holder that he has accepted it. (Bills of exchange act, sec. 21, subsec. 1.)

**Question 12 (a).** A bill of exchange is dishonored by nonacceptance when it is properly presented for acceptance and acceptance is not obtained within the customary time, or when presentment for acceptance is excused by law and the bill is not accepted. (Bills of exchange act, sec. 43.)

The "customary time" is practically 24 hours.

**Question 12 (b).** When a bill of exchange is dishonored by nonacceptance an immediate right of recourse against the drawer and indorsers for the full amount of the bill and expenses accrues to the holder and no presentment for payment is necessary. (Bills of exchange act, sec. 43, subsec. 2.)

**Question 12 (c).** When a bill is refused acceptance the holder has recourse to his ordinary legal remedies, which are the same as when a bill is dishonored by nonpayment. He may re-present the bill at maturity, but he is under no obligation to do so. (Bills of exchange act, sec. 43, subsec. 2.)

**Question 13.** If the acceptor of a bill fails before it matures the holder may cause it to be protested for better security, but this does not give the holder any right to demand security from the drawer and indorsers. (Bills of exchange act, sec. 51, subsec. 5.)

Question 14 (a). Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security, and is not overdue, it may be accepted for the honor of any party liable or for the honor of the person for whose account the bill is drawn. (Bills of exchange act, sec. 65, subsec. 1.)

Question 14 (b). Any person not being a party already liable on the bill may, with the consent of the holder, accept it for honor. (Bills of exchange act, sec. 65, subsec. 1.)

Question 14 (c). An acceptance for honor must be written on the bill, must indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. (Bills of exchange act, sec. 65, subsec. 2.)

Question 14 (d). The acceptor for honor engages that he will on due presentation pay the bill according to the tenor of his acceptance if it is not paid by the drawee, provided that it has been duly presented for payment and protested for nonpayment and that he gets the requisite notice of these facts.

Question 15 (a). The code of the United Kingdom does not recognize the "aval" of the foreign codes. Any collateral guarantee of a bill would be dealt with according to the ordinary civil law. As a substitute for the "aval" any person who wishes to guarantee a bill may write his name on it and thereby incur the same liability as an ordinary indorser. (Bills of exchange act, sec. 56.)

Question 15 (b). If a bill of exchange drawn in a foreign country is accompanied by an "aval," it seems that effect would be given to it according to the law of the place where the "aval" is given. (Bills of exchange act, sec. 72, subsecs. 1 and 2.)

Question 16. The custom of drawing bills payable on market days ("en foire") is obsolete in the United Kingdom, but not prohibited. Bills so drawn would come under the category of "bills payable at a future date."

The law draws a distinction between bills payable at sight or on demand and bills payable at a future time. Bills payable at sight or on demand are payable on presentation. Bills payable at a future time are entitled as of right to three days of grace, with this qualification: That if the last day of grace is a statutory holiday, then the bill is payable on the succeeding business day; whilst if the last day of grace is a common law holiday (e. g., Sunday or Good Friday), the bill is payable on the preceding business day. (Bills of exchange act, sec. 14.)

The consequence is that a bill is sometimes entitled to only two days of grace, while in other cases it is entitled to four days of grace.

Question 17 (a). Subject to certain exceptions ("force majeure," etc.), a bill payable at sight or on demand must be presented for payment within a reasonable time, but no precise limits are prescribed. (Bills of exchange act, sec. 45, subsec. 2.)

When a bill is not payable on demand (i. e., when it is payable at a future date), it must, subject to the like provisions, be presented for payment on the day on which it falls due, allowing for days of grace. (Bills of exchange act, sec. 45, subsec. 1.)

Presentment for payment must be made at a reasonable hour, which, in the case of business houses, means the ordinary business hours. (Bills of exchange act, sec. 45, subsec. 3.)

Question 17 (b). The holder of a bill can not be compelled to receive payment before maturity. (Bills of exchange act, sec. 59, subsec. 1.)

Question 17 (c). Payment before maturity only discharges the instrument as between the particular parties (bills of exchange act, sec. 59, subsec. 1), and operates as a purchase of the bill by the payer.

Question 17 (d). A bill of exchange must purport to be payable in legal currency and the holder is entitled to demand payment in legal currency (cf. bills of exchange act, sec. 3, subsec. 1), but when the time of payment arrives there is nothing in law to prevent the holder receiving satisfaction of the bill in any form which he likes to accept.

Where a bill drawn abroad, but payable in the United Kingdom, is expressed to be payable in a foreign currency, the amount must, in the absence of some express stipulation on the face of the bill, be calculated in English money according to the current rate of exchange for sight drafts. (Bills of exchange act, sec. 72, subsec. 4.)

Question 17 (e). The holder of a bill is not bound to accept part payment, but, if he likes to take it, the bill is discharged pro tanto, and he can proceed against the parties liable thereon for the balance.

**Question 18 (a).** When a bill has been protested for nonpayment, any person may intervene and pay it for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. (Bills of exchange act, sec. 68, subsec. 1.)

**Question 18 (b).** Payment for honor must be attested by a notarial act of honor, which may be appended to the protest or form an extension of it, and this must be founded on a declaration by the payer declaring his intention to pay the bill for honor and for whose honor he pays it. (Bills of exchange act, sec. 68, subsecs. 3 and 4.)

**Question 18 (c).** Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, and the payer for honor succeeds to the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to that party. (Bills of exchange act, sec. 68, subsec. 5.)

**Question 19 (a).** As regards the acceptor no formalities are required. The holder may sue him at once if he does not pay. (Bills of exchange act, sec. 52, subsec. 3, and sec. 54, subsec. 1.)

As regards the drawer and indorser, a distinction is drawn between inland and foreign bills. An inland bill need not be protested. A foreign bill must be protested; it must be "noted for protest" on the day of dishonor, but the protest may be extended at any subsequent time. Whether the bill be inland or foreign, notice of dishonor must be given to the drawer and indorsers.

In the absence of special circumstances ("force majeure," etc.), where the person giving and the person to receive notice reside in the same place, the notice must be given or sent off in time to reach the latter on the day after the dishonor of the bill, and where the person giving and the person to receive notice reside in different places the notice must be sent off on the day after the dishonor of the bill, if there be a post at a convenient hour on that day, and if there be no post on that day, then by the next post thereafter. (Bills of exchange act, sec. 49, subsec. 12.)

**Question 20.** The object of the rules regulating the right of recourse is twofold: (1) To give official notice to the drawer and indorsers that the bill has been dishonored and (2) to enable them to take prompt steps to protect themselves from the consequences of such dishonor.

**Question 21.** The holder may either give notice to his immediate indorser, trusting to him to pass it on to prior indorsers and the drawer, or he may himself give notice to all prior parties. He need not observe the order in which the various indorsers appear on the bill, but may claim on any one of them that he chooses. (Bills of exchange act, sec. 49, subsec. 3.)

**Question 22.** When a bill of exchange is dishonored, no distinction is drawn between the drawer and indorsers. All are entitled to the same notice of dishonor, and are alike discharged if such notice is not given. (Bills of exchange act, sec. 48.)

**Question 23.** When a bill has been lost the holder has two remedies: (1) He may apply to the drawer to give him another bill, but the drawer is entitled to demand security in case the lost bill should turn up in the hands of another person; (2) under an order of the court, and on giving the proper indemnity, he may bring an action on the lost bill just as if it had not been lost. (Bills of exchange act, secs. 69 and 70.)

**Question 24.** The procedure by "amortissement" is not known in the United Kingdom.

**Question 25.** Although the law provides a procedure under which the person who was the holder of a lost bill can obtain a fresh bill from the drawer, it provides no machinery for obtaining the signatures of the acceptor and indorsers.

**Question 26.** If there be any material omission in a bill of exchange (as, for instance, in the date or sum payable, or in the name of the holder), the holder of the bill has *prima facie* authority to fill up the omission, and even if it be wrongly or fraudulently filled up, it is enforceable according to its tenor as filled up if it gets into the hands of a holder in due course. (Bills of exchange act, sec. 20.)

**Question 27.** The law of the United Kingdom does not recognize the rule of *distantia loci*, so that a false statement of the place where the bill is drawn ("supposition de lieu") would be immaterial, nor does it require any statement of the value received, so a false statement of value received ("supposition de valeur") would also be immaterial.



If the name of the payee is that of a fictitious or nonexisting person "*supposition de nom*"), so that a genuine indorsement is an impossibility, the bill may be treated as payable to bearer. (Bills of exchange act, sec. 7 (3).)

Question 28 (a). Where the signature of the drawer, indorser, or acceptor is forged the general rule is that such signature is wholly inoperative, and no right to retain the bill or enforce payment thereof against any party can be acquired through or under that signature; and if the drawee or acceptor pays the bill in ignorance that the signatures of the drawers or indorsers have been forged, he is not discharged by that payment. (Bills of exchange act, sec. 24.)

To this rule there is an important exception in favor of bankers. If a banker, in good faith and in the ordinary course of business, pays a check or other demand draft drawn on him, he is not responsible for the authenticity of any indorsements, and the payment is a good discharge as between him and his customer. (Bills of exchange act, sec. 60.)

Question 28 (b). Where a bill or acceptance is materially altered without the assent of all parties liable, the bill as a general rule is nullified except as regards a party who has made or authorized the alteration and indorsers subsequent to him, but there is an exception to this rule where the alteration is not apparent.

In such case the holder in due course may enforce the bill according to its original tenor before it had been altered. (Bills of exchange act, sec. 64.)

Question 29 (a). As regards form, a protest must contain a copy of the bill, and must be signed by the notary making it. It must specify the person at whose request the bill is protested, the date and place of protest, the reason for protesting the bill, the demand made, the answer given (if any), or the fact that the drawee or acceptor could not be found. (Bills of exchange act, sec. 51, subsec. 7.)

Subject to certain exceptions ("*force majeure*," etc.) a bill must be noted for protest on the day of its dishonor. The formal protest can then be drawn up at any time. (Bills of exchange act, sec. 51, subsecs. 4 and 9.)

Question 29 (b). If a bill is presented through the post office and returned to the holder by post dishonored, it may be protested at the place to which it is returned; and if a bill is drawn payable elsewhere than where the drawee resides, it must be protested at that place.

If a bill is dishonored in a place where there is no notary its dishonor may be certified by a householder in the presence of two witnesses. The certificate operates as if it were a formal protest. (Bills of exchange act, sec. 94.)

Question 30. If a bill is dishonored, the acceptor, the drawer, and the indorsers may be sued at any time within six years of the dishonor; and under certain conditions this time may be extended, as, for instance, where a party sued has made part payment on account. (Statute of limitations.)

Question 31. The time begins to run in favor of the acceptor from the time when he dishonored the bill, and as regards the drawer or indorser, from the time when he received notice of dishonor.

Question 32. No such procedure is known in the United Kingdom.

#### PROMISSORY NOTES.

Question 33. As regards form, the requisites of a promissory note are similar to those of a bill of exchange; e. g., it may be drawn payable to order or to bearer or to a particular person only. (Bills of exchange act, sec. 83.)

Question 34. The provisions relating to a bill of exchange apply in general to promissory notes, the maker of the note corresponding with the acceptor of the bill and the first indorser of the note corresponding with the drawer of an accepted bill payable to drawer's order. (Bills of exchange act, sec. 89, subsecs. 1 and 2.)

Special provisions are made for joint and several notes, for notes containing pledges of collateral security, and for notes payable on demand. (Bills of exchange act, secs. 83, 85, and 86.)

Question 35. The following provisions as to bills of exchange do not apply to promissory notes, viz, presentment for acceptance, acceptance, acceptance for honor, bills in a set, protest.

#### PRIVATE INTERNATIONAL LAW.

Question 36 (a). When laws conflict, the capacity of a party to a contract is usually determined in the United Kingdom according to the *lex domicilii* and

not according to the law of nationality, but probably for mercantile purposes it must be determined by the *lex loci contractus*.

Question 36 (b). The validity of a bill as regards requisites in form is determined by the law of the place of issue and its validity as regards the requisites in form of the supervening contracts, such as acceptance or indorsement or acceptance under protest, is determined by the law of the place where such contract was made. If, however, a bill issued outside the United Kingdom conforms in matter of form to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in England. (Bills of exchange act, sec. 72, subsecs. 1 and 6.)

Question 36 (c). The duties of the holder ("formalités") with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonor, are determined by the law of the place where the act is done or the bill is dishonored. (Bills of exchange act, sec. 72, subsec. 3.)

Question 36 (d). The law of the United Kingdom disregards the fiscal laws of other countries. A bill drawn out of but negotiated in the United Kingdom has to conform to the stamp laws of the United Kingdom. If a bill is issued out of the United Kingdom, it is not invalid for English purposes by reason only that it is not stamped in accordance with the law of the place of issue. (Bills of exchange act, sec. 72, subsec. 1 (a).)



## II. INSTRUCTIONS TO THE BRITISH DELEGATION.

No. 11.]

*Sir Edward Grey to Sir G. Buchanan.*<sup>1</sup>

FOREIGN OFFICE, *June 16, 1910.*

SIR: With reference to previous correspondence on the subject of the forthcoming international conference at The Hague on the laws relating to bills of exchange, I transmit herewith for your guidance two copies of the instructions to the British delegates, which have been received from the board of trade and have been approved.

I am, etc.,

E. GREY.

[Inclosure in No. 11.]

### INTERNATIONAL CONFERENCE ON THE LAWS RELATING TO BILLS OF EXCHANGE.

#### INSTRUCTIONS TO THE BRITISH DELEGATES.

The British delegates to The Hague conference on the unification of the laws relating to bills of exchange are empowered to discuss any proposals that may be brought before the conference, and in so doing they should emphasize the facts, first, that the rules of law in force in the United Kingdom have been adopted substantially unchanged in the British oversea dominions; and secondly, that the English law merchant is an integral part of the common law and, broadly speaking, English law draws no distinction between traders and nontraders. There are accordingly in the United Kingdom no special tribunals of commerce, and any dispute which may arise on a bill of exchange is determined by the ordinary tribunals as part of their ordinary business.

As a general rule the British delegates will not hold out any hope that English rules of law are likely to be substantially modified and brought into conformity with continental rules, particularly in cases where the English rule prevails not only in the United Kingdom, but also throughout the English-speaking world. It will be open for them, however, to argue in favor of the English rules and to point out to the foreign delegates the advantages of adopting them.

There are, nevertheless, certain points on which the English law is doubtful or where there are points of divergence between the different English-speaking communities. In such cases it would evidently be desirable if a uniform rule could be arrived at, and the uniformity of the rule is probably of more importance than the nature of the rule itself.

#### 1. *Discrepancies between words and figures.*

The English act provides for words prevailing over figures, but makes no provision for discrepancies where the sum payable is expressed more than once in words or more than once in figures.

German law provides that in such cases the lower sum shall prevail, and the German rule accords with the practice of English bankers, though it has not the sanction of positive law. There appears to be no objection to adopting the German rule into our law.

#### 2. *Form of acceptance.*

As English law now stands, an acceptance on the back of a bill is clearly irregular, but perhaps not invalid. A uniform rule providing that an acceptance must be written on the face of the bill would be convenient.

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<sup>1</sup> Also to Sir. M. D. Chalmers and Mr. F. H. Jackson.

*3. Limitation of time for presentment or negotiation of demand drafts.*

In the United Kingdom a bill payable on demand (other than a check) must be presented for payment within a reasonable time after issue in order to make the drawer liable, and within a reasonable time after indorsement to make the indorser liable.

So, too, a bill payable after sight must either be presented for acceptance or negotiated within a reasonable time after it comes into the holder's possession.

The foreign codes fix definite limits of time in all these cases, and there is a good deal to be said for adopting fixed limits if convenient limits could be agreed on. The present foreign limits are too long, according to English business notions.

*4. Drawee's time of deliberation as to acceptance.*

Under English law, when a bill is duly presented for acceptance and is not accepted within the "customary time," the person presenting it must treat it as dishonored by nonacceptance. The "customary time" is usually taken to be one business day. Most of the foreign codes and some of the States of the United States fix the time for deliberation at 24 hours. The English rule is too vague, and the 24-hour limit, if strictly construed would give rise to much dispute. If a uniform rule could be arrived at that the drawee should be allowed to retain the bill till the close of business hours on the next succeeding business day, this would appear to be a desirable compromise.

*5. Presentment for acceptance.*

Under English law if a bill payable after date is presented for acceptance and dishonored, the holder must immediately give notice of dishonor; and (if the bill be a foreign bill) have it protested for nonacceptance. Under the continental codes the holder is under no such obligation; he can not sue on the bill until it is overdue, but he can demand security from the drawer and indorsers, and the tribunals of commerce provide the necessary machinery.

As at present advised, it seems very undesirable to depart from the English rule. The drawer and indorsers are entitled to prompt notice to enable them to protect their interest when the bill is dishonored. When the drawer and indorsers are in a foreign country it is difficult to see how they can be compelled to give security; but it will be interesting to find out how this matter is dealt with in practice under the foreign codes.

*6. Place of payment.*

As English law stands at present, if the drawer of the bill indicates a place of payment, but the bill is accepted payable at a different place, the acceptance is nevertheless a general acceptance. There is a good deal to be said for adopting the rule, which prevails in many countries, that if the drawer expressly specifies a place of payment, and the acceptor accepts the bill payable at a different town or place, the holder shall be entitled to treat this as a qualified acceptance.

*7. Days of grace.*

England and the English colonies and a few of the States in the United States are the only countries which retain days of grace. They have been almost uniformly abolished. There is no valid reason for their retention, and it would be exceedingly convenient that bills throughout the world should be payable according to their tenor.

*8. Bills maturing on nonbusiness days.*

In England a distinction is drawn between bills which fall due on common-law holidays, such as Sunday, Christmas Day, and Good Friday, and bills which fall due on bank holidays, and the rules are exceedingly complicated. It does not appear that any such distinction is drawn in any other country. The only argument in favor of the English rule is this: When a bank holiday follows or precedes a Sunday there is an accumulation of maturing bills, and it is convenient to have the maturity of some thrown back, while the maturity of others is thrown forward. But the English rule often gives rise to mistakes, and



probably the advantages of having a uniform rule throughout the world would largely exceed any inconvenience that might arise from the temporary press of business.

#### 9. *Protest for better security.*

When the acceptor of a bill becomes bankrupt before a bill matures, the holder may protest it for better security. The only effect of this in England is that the holder may take an acceptance for honor, if he can get one. Under the continental codes the holder can demand security from the drawer, and, failing the drawer, from the indorsers. There is no machinery in England for any such procedure, and it is difficult to see how it can operate when the drawer is in a foreign country. It would be interesting to find out how the continental rule works in practice, though the British delegates should certainly not pledge themselves to recommend its adoption.

#### 10. *Effects of dishonor.*

Under English law the holder of a bill has, as a general rule, one day allowed him for giving notice of dishonor; and if he gives notice to his immediate indorser, that indorser also has a day for passing it on. Continental codes allow a longer time, Germany, for instance, allowing two days. If the uniform rule of two days could be arrived at, it might be desirable to adopt it.

There is also a good deal to be said for the rule which prevails in some foreign countries under which the drawer of an unaccepted bill is not absolutely discharged by any irregularity in giving notice of dishonor, a distinction being drawn between the position of the drawer and the indorsers.

Under English law a foreign bill must be noted for protest on the day of its dishonor. This often gives rise to difficulty in places outside London, where notaries are scarce and the procedure for dealing with foreign bills is unfamiliar. There is a good deal to be said for the German rule, which allows a bill to be noted for protest as soon as it is dishonored, but does not require this to be done until the next day.

#### 11. *Stamp duties.*

The bankers' institute recommend that "following what is believed to be the universal rule in other countries, the penalty for a breach of the stamp laws should, in all cases, be a monetary one, and not the inability to recover on the instrument." This is a matter for the English revenue authorities, but it will be interesting to hear what the foreign delegates have to say on the question, and to find out how far the foreign laws effectively protect the revenue.

#### 12. *Signature by stamp.*

A signature by stamp is clearly irregular, if not invalid, according to English law, and probably its express prohibition could be universally agreed on.

#### 13. *Oriental indorsements.*

The bankers' institute suggest that oriental indorsements should be accompanied by translations by the last indorser. It is difficult to see how this rule could be enforced, but if the conference can suggest any workable and uniform rule for dealing with indorsements in oriental characters, there would probably be little difficulty in getting it adopted in England.

#### 14. *Forged indorsements.*

Under English law the payer of a bill is responsible for the authenticity of the indorsements, that is to say, if he pays the bill to a person who holds it under a forged indorsement the payment is invalid, and the loss falls on the payer.

Under some of the continental codes, if the indorsement appears to be in order the payer is protected, just as a banker in England is protected if he pays a check held under a forged indorsement. The English rule is so well settled and so strongly supported by the mercantile community (bankers excepted) that there is no prospect of its being altered. But there is a good deal to be

said in favor of making the person who presents the bill for payment warrant the authenticity of the indorsements under which he claims; he knows the person he received the bill from, and he ought to look to him if he has had a worthless instrument indorsed to him. If any agreement could be arrived at on these lines it ought to be open to consideration.

#### 15. *Indorsements "sans frais."*

If such a stipulation be inserted in England there is no doubt as to its effect. It relates only to the particular party who inserts the stipulation and does not affect subsequent parties. Under the continental codes the law is by no means uniform. This is one of those matters where uniformity is of more importance than the rule itself, and where it might be desirable to adopt any rule which could obtain general acquiescence.

#### 16. *Conflict of laws.*

Any uniform rules which could be arrived at for setting the conflict of laws would be advantageous, but it is difficult to see why those rules should be confined to bills of exchange. The rules for the most part should apply to mercantile documents generally, and this is a question in regard to which the English delegates can only watch the course of events.

The above instructions are intended solely for the general guidance of the British delegates. They are empowered to exercise full discretion as to compromise in respect of each of the points dealt with in these instructions, and also as to any other points which do not involve matters of general policy; and it will, therefore, be probably unnecessary for them to refer home for further instructions during the course of the conference. They will, however, in all cases make it clear that they are unable to do more than undertake to recommend to the favorable consideration of His Majesty's Government such changes in the English rules as may, after discussion, appear to them advisable, subject to the general limitations set out in the first paragraph of these instructions.

### III. REPORT OF THE BRITISH DELEGATION.

No. 14.]

*British delegates to Sir Edward Grey. (Received Aug. 11.)*

THE HAGUE, *August 8, 1910.*

SIR: With reference to our dispatch of the 23d ultimo, we have the honor to submit the following report on the proceedings of the conference on bills of exchange:

The conference met on the 23d June and sat until the 25th July. In its composition it was both interesting and representative. Thirty-eight nations sent delegates to The Hague—the number of delegates for each nation varying from one to seven. The delegates included bankers and merchants, as well as lawyers, judges, and diplomatic representatives. The language used was French, and perhaps the debates suffered somewhat from the fact that only three of the nations represented were speaking their own tongue. As might be expected from the number of points raised on the Questionnaire or otherwise, some questions were fully and thoroughly debated, while the discussion of others was somewhat perfunctory, but throughout the proceedings the most pleasant and friendly relations subsisted between the delegates. Apart from the discussions in conference or committee, there was a good deal of informal exchange of views between the various delegates, which was both useful and interesting. In particular, the German and English delegates frequently discussed points together and compared views.

The conference opened with an informal discussion in plenary session of the 89 points raised by the Questionnaire. The conference was then split up into five sections, each comprising seven nationalities. The president of each section was nominated by the conference, and then each section proceeded to elect its own rapporteur. The points raised by the Questionnaire were then considered seriatim and discussed by each of the sections, and new points were allowed to be raised. The opinions of the different nations were elicited and votes taken when necessary, and then the report of the proceedings of each section was presented to the central committee.

The central committee met as soon as the sectional reports were in print. It was composed of the five presidents of the sections, the five rapporteurs, five expert members, i. e., bankers and merchants, and five other selected members. It was presided over by M. Asser. Taking as the basis of its discussions the reports of the five sections, the points of the Questionnaire were again gone through. When opinions differed, votes were taken and the resolutions of the committee were arrived at by simple majorities. The conclusions of the committee were then drawn up by the rapporteurs, MM. Lyon-Caen and Simons, in a series of articles, accompanied by an explanatory memorandum.

The resolutions of the central committee, formulated as articles, were then brought before the conference in plenary session, and were passed in one sitting without amendment. The committee on private international law then presented their report, and submitted three draft articles which were agreed to by the conference. The rapporteurs of the central committee and the rapporteurs of the committee on private international law (MM. Renault and Kriege) were then instructed to incorporate the three articles on the conflict of laws into a preliminary draft of the uniform code, making at the same time any necessary drafting alterations.

The next day the combined work of the four rapporteurs was presented to the conference in the form of a draft convention and uniform law, and this draft (England and the United States standing aside) was adopted by the conference without division.

The attitude of His Majesty's Government was clearly defined by Sir George Buchanan at the beginning and close of the conference, and can best be explained by the following extract from his speech on the 21st July at the closing sittings of the full conference:

We have followed with profound interest the progress of the labors of the conference, and the discussions in which we have had the honor to take part have brought home to us more than hitherto the effect of the laws which govern bills of exchange in the different countries in the world, as well as the underlying reasons which have brought about the adoption and maintenance of these laws. We shall not fail to submit to our Government a detailed report on the whole of the proceedings of the conference, and to indicate at the same time those points where in our opinion the English law is capable of improvement. When the competent authorities have considered this report, His Majesty's Government will decide whether or no certain rules of the English law should be modified in accordance with the resolutions adopted by the conference.

However, it is our duty again to affirm that it is impossible for our Government to go further or to depart from the attitude which it has taken from the beginning of this conference. It is no question of national pride or obstinacy which has given rise to this attitude, but the necessity of safeguarding the interests of our mercantile community. A law which governs more than 120,000,000 people—including the United Kingdom, the British colonies, and most of the States of the United States of America—without counting the vast population of the Indian Empire—can not be modified without disturbing long-settled commercial relations and without creating divergences in legislation among the members of the Anglo-Saxon family.

It is possible that among the rules of English law there are some which are antiquated and inconvenient, but in its main lines our law does but incorporate the usages of our commerce. It is not an arbitrary law imposed by the legislature on the commercial community; the legislature has but given the sanction of law to the usages of our commerce and trade, and in modifying that law we should upset long-established customs. There are other reasons in the domain of law which raise equal difficulties. We have no separate *droit de change*. We have no tribunals of commerce. We draw no distinction between traders and nontraders. Our commercial law is an integral part of our common law, and it is the ordinary civil courts which give effect to its provisions in the same manner as they give effect to ordinary debts and obligations.

You can well understand after what I have just said that it is impossible for the British delegation to associate itself officially in the drafting of a proposed uniform law when by their instructions they are forbidden to take any such undertaking into consideration.

The United States took up a very similar attitude, as appears from the following quotation from the declaration made by Mr. Conant immediately after Sir George Buchanan had spoken:

In many particulars the provisions of the project follow those of the laws of Great Britain and of the United States, which took the initiative many years ago in seeking to bring about uniformity on this subject among other several

colonies and States. In providing for the abolition of days of grace and for the extension of the time within which protest may be made, you have accepted two reforms which will be eminently acceptable to American bankers.

In accordance with my statement at the beginning of our meetings, there is great reluctance in America to undo the long and arduous work which has brought about uniformity in 35 American States, 4 Territories, and in Great Britain and her dependencies. The scope and policy of American laws differ in some respects from the systems of the countries of the Continent. We have no code of commerce distinct from the common law, we recognize no distinction between merchants and others who draw bills or sign notes, and we have no separate tribunals for dealing with commercial cases. Under these conditions our difficulties would be greater, if we should undertake to adopt a uniform law, than in countries where a long succession of laws and usages are based upon the existence of a special commercial code.

How great have been these difficulties, in framing the project of the uniform law, is indicated by the fact that, in spite of the great skill of your distinguished rapporteurs, they were compelled to leave no less than 23 points in the various articles to be governed by national legislation and practice or by the ordinary rules of the civil law.

In the United States, moreover, there is another obstacle to uniformity in the fact that by the decision of the highest Federal tribunal the Federal Government has no authority to legislate regarding bills of exchange, whether foreign or domestic. Such documents are considered in the nature of contracts, which are governed by State law and only reach the Federal tribunals when conflict between the laws of the States requires interpretation and reconciliation.

Before the conference met, Germany, Hungary, and Belgium had each prepared a draft code of uniform law. None of these codes were formally before the conference, but a comparison of the draft uniform law with the German draft shows that in substance the German draft has been accepted by the conference. Certain concessions were made to France, Italy, and Austria, and certain additions and alterations were made as the result of discussions in the conference. No doubt if England and the United States had held out any hope of becoming parties to the convention for the uniform law, the delegates would have adopted certain English and American rules in order to secure the adhesion of those countries; but as no such hope could be held out, the discussions naturally turned in the main on the conflicts and discrepancies between the various continental codes.

On the whole, the draft uniform law approaches the English law rather more nearly than any existing continental code, but the points of divergence are numerous and in some cases of far-reaching importance.

The draft uniform law applies only to bills of exchange and promissory notes payable to order. It has no application to promissory notes payable to bearer or to checks on a banker. It is proposed that the nations who adopt the uniform law should adopt it by convention—that is to say, that it must be adopted in its entirety, without addition, derogation, or alteration, except so far as certain points are by the law itself left open to national legislation. The contracting parties are as far as possible to adhere to the convention for their colonies, as well as for their own territories.

The draft uniform law is not yet in its final form. It is to be submitted for observations to each government which took part in the conference, and is to be finally settled in a second conference which, it is suggested, should be held at The Hague in September, 1911. At this conference the question of checks is also to be considered.

It remains to be proved whether the second conference will be a position to give effect to a uniform law on bills of exchange when the



present draft law has been subjected to a searching examination by the various governments interested and when its provisions have been once more discussed by the delegates of those powers who, at the present conference, were unable to accept all the conclusions of the central committee.

Sir Mackenzie Chalmers and Mr. Frederick Huth Jackson will forward a separate memorandum criticising the draft uniform law and comparing its provisions with the English law, and making certain recommendations for the amendment of that law.

We also inclose two documents which we think you will find of great interest. The first is a report by the rapporters of the central committee, M. Lyon-Caen (France) and M. Simons (Germany). The second is a report of the rapporters of the special committee on international law, M. Renault (France) and M. Kriege (Germany).

We have, etc.

GEORGE W. BUCHANAN.  
M. D. CHALMERS.  
FRED. HUTH JACKSON.

IV. MEMORANDUM ON THE PROPOSED UNIFORM LAW BY THE  
BRITISH TECHNICAL DELEGATES.  
No. 16.]

*Memorandum by Sir M. D. Chalmers and Mr. F. H. Jackson.—  
(Received Aug. 16.)*

A draft uniform law which has been unanimously accepted by the delegates of more than thirty nations, many of them invested with plenary powers, deserves the most careful consideration from the English mercantile community. On the whole, the uniform law approaches English law more nearly than any existing continental code. The points of difference between English law and the proposed uniform law are numerous; some of them are unimportant, while others are of the highest importance as affecting bills which circulate from country to country. The points of difference can perhaps be most clearly brought out by putting in juxtaposition the articles of the uniform law and the corresponding provisions of the English bills of exchange act. We have, therefore, set out a translation of the uniform law, employing as far as possible the language of the English act and in a parallel column we have inserted against each article of the uniform law the corresponding provision of the bills of exchange act, 1882, or where there is no corresponding provision a brief explanatory note. Minor divergencies will speak for themselves, and we propose to confine our memorandum to discussing the more important points of divergence, and the reasons which may be urged in favor of the English or of the foreign rule, as the case may be.

The points on which the two laws differ will be found to fall into four categories:

(a) There are certain points where the English rule is antiquated and inconvenient, or where the law is obscure.

(b) There are other points where the English and the foreign rule appear to be equally convenient, and where it might be well to adopt the foreign rule for the sake of uniformity after it has been enacted by the legislatures of a large number of other important mercantile countries, more especially if, after consultation with our colonies and the United States, we find that they will be inclined to follow suit.

(c) There are points of difference depending on differences in the underlying systems of law which supplement the special code as to bills of exchange—the rules, for instance, which depend on the existence of tribunals of commerce, and the special procedure in force in countries where a sharp distinction is drawn between commercial and civil law and between traders and nontraders.

(d) There are points where, in our opinion, the English law, founded as it is upon the usages of trade and bankers, is distinctly more convenient than the foreign rule. As regards these points, if

English mercantile opinion is in accordance with our views, we trust that there will be an opportunity to bring our views before the final conference which will meet about a year hence to shape the draft uniform law into its final and complete form. Although England can not join in the uniform law, it is important for us that that law should not contain provisions which are inimical to international commerce. Whatever shape the uniform law may eventually assume, it will undoubtedly be advantageous to have only one continental system to deal with, instead of the present multiplicity of divergent laws.

We may note, to begin with, that the uniform law applies only to bills of exchange and to promissory notes payable to order. It has no application to promissory notes payable to bearer or to checks. The English act applies both to checks and to promissory notes payable to bearer. The uniform law draws no distinction between inland and foreign bills. English law for certain purposes, such as protest, etc., draws a distinction.

1. The uniform law (art. 1) starts by requiring every bill of exchange to specify in the body of it that it is a bill of exchange, but any contracting state is allowed to dispense with this provision in its own territories in the case of bills expressly made payable to order. From the English point of view this requirement is needless and vexations; the English law regards only the substance of an instrument, and does not trouble itself with insisting on verbal forms. On the other hand, in some continental countries there are instruments resembling bills in point of form, but which have a wholly different legal effect, and which it is important to distinguish.

2. The uniform law (arts. 1 and 2) requires every bill of exchange to be dated, on pain of nullity. A bill, of course, should be dated, but sometimes the date is accidentally omitted, and then, according to the English rule, the holder may fill it up. The foreign delegates thought this a too dangerous rule, and declined to make any provision for undated bills.

3. The uniform law (art. 3) allows bills to be drawn payable to bearer, but most continental countries at present prohibit them. It provides, however, that any contracting state may prohibit their issue, acceptance, or payment in its own territory. The English delegates pointed out that very few commercial bills were drawn payable to bearer, and that it was unnecessary to prohibit them, as the drawer would not draw and the holder would not take a bill payable to bearer, unless it suited their convenience. We also pointed out that Treasury bills and Indian council bills which circulate largely on the continent were payable to bearer.<sup>1</sup> It may be noted that the countries which prohibit bills to bearer nevertheless allow the drawer to draw a bill payable to his own order and then indorse it in blank before issue, so that when issued it is payable to bearer.

4. The uniform law (art. 6) provides that a bill payable at or after sight may be drawn payable with interest. Most continental codes have hitherto refused to recognize bills payable with interest, but it was pointed out that the stipulation for interest was common in over-sea bills drawn at or after sight. The uniform law accord-

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<sup>1</sup> They are drawn payable to ——— order, with a note that, if the blank be not filled up, the instrument will be payable to bearer.

ingly allows a bill payable at or after sight to be drawn payable with interest. We pointed out that there was no reason for forbidding a bill or note payable after date to bear interest, but the foreign delegates declined to make any further innovation in their old rule. The article goes on to provide that where the rate of interest is not specified 5 per cent should be understood. This is a convenient provision, which accords with English usage, and which well might be incorporated in our act.

5. Both the uniform law (art. 7) and the English act provide that when the sum payable is expressed in words and also in figures the words shall prevail over the figures, in case of discrepancy. The uniform law then proceeds to add that if the sum payable be expressed more than once in words or more than once in figures, then, in case of discrepancy, the lesser sum is the sum payable. This is in accordance with the practice of English bankers, and is a convenient rule which might well be added to our act.

6. The uniform law (art. 9) provides that where an agent, signing on behalf of a principal, acts without authority, or exceeds his authority, he is personally liable on the bill. English law does not make the agent liable on the bill, but makes him liable in an action for damages for false representation, or for breach of warranty of authority. Having regard to the nature of a bill of exchange as a form of paper currency, the foreign rule is probably rather the more convenient rule.

7. The uniform law (art. 10) prohibits the drawer of a bill from drawing it without recourse. English law allows this to be done. Such bills are very uncommon, though, as we pointed out, they might be justifiable where a man was drawing for the account of a third party, or where the drawer was acting in a representative capacity, e. g., as an executor. The continental delegates adhered to their rule, on the ground that where a drawer drew a bill without recourse there was nobody liable on the bill at all at the time of its issue, and if it were refused acceptance there might never be anybody liable on it.

8. The uniform law (art. 12) prohibits an indorsement which in terms is payable to bearer. This seems unnecessary, as an indorsement in blank makes the bill payable to bearer. An indorsement to bearer appears to be nothing more than an indorsement in blank written out in full.

9. The uniform law (art. 16) merely requires the holder to satisfy himself that there is an unbroken chain of indorsements on the bill, ending with the person who indorses to him. If he takes the bill for value and in good faith, he acquires a good title, even though one or more of the indorsements are forged. This rule appears to prevail generally over the Continent, and is all the more curious because of the continental distrust of bills payable to bearer. But if a forged indorsement be as good as a genuine indorsement, the bill is to all intents and purposes payable to bearer. Under section 24 of the English act no title can be made through a forged indorsement, and any person who either pays or receives the money for the bill is liable in an action by the true owner. To this rule the common law makes no exception, and no exception is admitted in the United States, but English law has now admitted two exceptions. In the first place, under section 60 of the bills of exchange act, a banker who pays a demand draft drawn upon him is not bound to verify the authenticity

of the indorsements. In the second place, the rules of private international law give effect to transfers of movables according to the law of the place where the transfer was effected. This principle has recently been extended to negotiable instruments, so that if the holder on the Continent has acquired a good title to a bill which is held under a forged indorsement, his title is recognized in England, and so of course is the title of any holder who derives title from him. *Embiricos v. Anglo-Austrian Bank* (1905), 1 K. B. 677 C. A.

10. The uniform law (art. 19) recognizes and regulates indorsements made expressly by way of pledge. These indorsements only prevail in one or two continental countries (see, e. g., art. 91 of the French Code de Commerce) and are of no interest to us.

11. According to English law, an overdue bill may be indorsed or transferred after maturity, but in that case a holder who takes it after maturity can not get or give a better title than that possessed by the person from whom he took it. The uniform law (art. 20) does not consider a bill overdue till the time for protesting it has expired (i. e., two days after maturity). Any subsequent transfer only operates as a civil cession.

12. The uniform law (art. 24) departing from the usual rule on the Continent, proposes to recognize the simple signature of the drawee on the bill as an acceptance. This accords with English law, but the uniform law goes on to provide that such an acceptance must be written on the face of the bill. The object of this further provision is to prevent the acceptance being confused with the indorsements, and it would be advantageous if we adopted a similar rule.

13. The uniform law (art. 25), in accordance with the universal continental rule, allows a partial acceptance, but makes any other qualification equivalent to a refusal to accept. Under English law the holder has the option to take or refuse a partial acceptance, and this seems the sounder rule. If a partial acceptance could be forced on an unwilling holder, it practically makes the amount payable by the bill uncertain. Moreover, if the bill is dishonored at maturity, the holder has to go back on the holder and indorsers by two separate proceedings, which is both vexatious and costly.

14. The uniform law (art. 27) provides in terms that the holder of a bill which is presented for acceptance is not bound to leave it with the drawee during the time that he has for consideration. English law is silent on the subject, but the custom is to leave the bill with the drawee. There is, however, a good deal to be said in favor of the provisions of the uniform law.

15. The uniform law (art. 31) provides that an acceptance for honor may be given by a party who is already liable on the bill. English law does not permit this, but there seems to be no reason why, say, an indorser should not accept for the honor of the drawer. In this case we might accept the foreign rule.

16. The uniform law (art. 32) for the most part adopts the English rule that the holder is not bound to take an acceptance for honor, but it makes an exception for the case where the drawer has expressly named a case of need, resident in the place where the bill is payable. The English rule seems the sounder one. Why should the holder be compelled to resort to a case of need whom he knows to be a man of straw, or who may be a bankrupt or a lunatic? The uniform law (art. 33) further requires that when a bill is accepted for honor, the



acceptor for honor must give notice to the party for whose honor he has accepted by registered letter two days after the acceptance. The party who receives this notice must in like manner pass it on to previous parties liable. English law contains no such provision.

17. The uniform law (art 34) further provides that where a bill has been accepted for honor, the person for whose honor it has been accepted may at once take it up and pay it under discount, and proceed against the parties liable to him. English law contains no such provision, and the rule seems rather inconsistent with the nature of an acceptance for honor which, when once taken, is like any other acceptance.

18. The uniform law (art. 38) details the rules regulating the guarantee of a bill by "aval," a form of guarantee unknown to English law. The only equivalent in our law is the provision contained in section 56 of the bills of exchange act, which enacts that any person who signs a bill otherwise than as a drawer or acceptor shall be liable as an indorser. As foreign bills sometimes bear "avals" on them it is convenient to have the effect of these contracts clearly detailed.

19. The uniform law (arts 39 and 40) disallows days of grace, and provides that when a bill falls due on a nonbusiness day it shall be deemed to be payable on the next succeeding business day. The English rule, under which three days of grace are allowed and under which, when a bill falls due on a common-law holiday it is payable the day before, and when it falls due on a bank holiday it is payable on the succeeding business day, was universally condemned as complicated, misleading, and inequitable. All continental nations, some English colonies, and most of the States in the United States, including New York, have already abolished days of grace. No country, except England, draws a distinction between common-law and statutory nonbusiness days.

20. The uniform law (art. 41) provides that a bill payable at sight must be presented for payment within six months of its issue, unless the drawer, when drawing it, extends the time for presentment to 12 months. No doubt, when a man draws a bill at sight, he does not intend to be indefinitely liable on it, but if the bill circulates through widely distant countries, six months may be too short a time, and the unfortunate holder may find that he has bought a void security. English law fixes no limit of time for presenting a sight bill, but requires every holder either to present or circulate it within a reasonable time. The English rule seems the right one, if it were not so difficult to apply. In case of dispute, the question of reasonable time can only be settled by a lawsuit and a jury. The same considerations apply even more strongly to the presentment for acceptance of bills payable after sight (art. 23). Such bills, when circulated in distant countries, frequently come forward for acceptance more than six months after issue.

21. The uniform law (art. 42) provides that if the date is omitted in the acceptance of a bill payable after sight, the holder may protest it, and then the time of payment has to be calculated from the time of protest. If this be not done the maturity of the bill has to be calculated from the last available day for presentment for acceptance according to the limits of time fixed by article 23. In England the holder may insert the date. This is a much simpler rule, though not without its dangers.

22. The uniform law (art. 47) provides that the holder of a bill may present it for payment either on the day that it falls due, or on either of the two following business days. This, in effect, allows two days of grace to the holder, though no time of grace is allowed to the payer. According to English law the bill must be presented for payment on the day that it falls due, and if it is not so presented the holder loses his right of recourse against the drawer and indorsers. We think the English rule is the sound one. The person who has to pay the bill knows the day that it is due, and both according to the English and the foreign rule must have his money ready on that day. But if the bill is not presented and paid that day the drawer and indorsers have a right to prompt notice of that fact, in order that they may take steps to protect their interests. To give an illustration: Suppose a bill falls due on Saturday, Sunday is a dies non, and Monday is a bank holiday. According to the foreign rule the holder need not present the bill for payment till Wednesday afternoon, and in the meantime the acceptor may have failed.

23. The uniform law (art. 48) provides that the holder can not refuse partial payment, and this rule is defended on the ground that he is bound to accept partial payment, in order to relieve, *pro tanto*, the drawer and indorsers. English law gives the holder an option to take or refuse partial payment. This seems the sounder rule. It is the rule which prevails throughout our whole law of contract. If the holder has a bill for £300 payable in a certain place, payment to him of £30 at that place might be wholly useless. Again, where the acceptor has some trifling dispute with the drawer he will be apt to offer in payment something less than the amount of the bill, possibly trusting that the holder will not care to go back on previous parties for a very small sum.

24. The uniform law (art. 49) provides that the drawee or acceptor who pays a bill at maturity is not bound to verify the signature of the indorsers. It is sufficient if the chain of indorsements appears to be in order. The English act adopts this rule in the case of checks and other demand drafts on bankers, but not in any other case. In the United States, following the English common law, no such exception is made. There are strong arguments in favor either of extending the provision of section 60 of the bills of exchange act to all payments, or of providing that the person who presents the bill for payment shall warrant the genuineness of the indorsements under which he holds the bill. It is impossible for the payer to verify the indorsements on the bill; but, on the other hand, every person who takes a bill from another, gets a warranty of the genuineness of all previous indorsements, and ought to know the person from whom he takes it.

25. The uniform law (art. 50) allows the drawer expressly to stipulate that the bill should be payable in a specified foreign currency, e. g. that a bill might be drawn in India on England, payable in rupees, without option of conversion into English currency. The bills of exchange act would not allow this in England. An instrument payable only in bullion or foreign currency would not constitute a bill of exchange.

26. The uniform law (art. 52) requires all bills and notes whether inland or foreign to be protested in case of dishonor. English law requires protest only in the case of foreign bills of exchange. The

uniform law does not recognize our convenient English system of "noting" bills. In England, when a bill has been duly noted, the formal protest can be at any time extended as of the date of noting. This often saves the expense of protest. But there is a good deal to be said in favor of the system of requiring all bills to be noted, and of making the noting *prima facie* evidence of due presentment and of dishonor.

27. The uniform law (art. 52) provides that an unpaid bill must be protested on one of the two business days following the day for payment. English law requires that the bill shall be protested, or at any rate noted for protest, on the day of its dishonor. This rule often gives rise to great inconvenience in country places where it is difficult to obtain the services of a notary. It would be well to alter the rule if a preliminary difficulty can be got over. The protest is generally taken as showing that the bill was duly presented for payment on the proper day, but if the protest be not initiated until the next day there is nothing to show that the bill was duly presented the day before. Moreover, notice of dishonor must, as a general rule, be sent off on the day after dishonor. Any change in our law requires further careful consideration.

28. As regards notice of dishonor, the uniform law (art. 55) and the English law differ radically. The uniform law requires the holder to give notice of dishonor to his immediate indorser, and also within four days of protest to give notice of dishonor to the drawer. The English law allows the holder either to give notice to his immediate indorser, trusting to him to pass it on to previous parties or to give notice at once to all parties liable, and such notice then avails for the benefit of all parties concerned.

The uniform law allows the holder 48 hours for giving notice of dishonor counting from the time of protest, and the party to whom notice of dishonor is given has 48 hours for passing it on. Speaking generally, the English law only allows 24 hours where the foreign rule allows 48.

The uniform law requires notice of dishonor to be given by registered letter. It supplements this provision by providing that notice of dishonor may be given by a letter delivered by hand, if the delivery is acknowledged by the person to whom it is sent, by a dated and signed acknowledgment. The English law allows notice of dishonor to be given verbally or by the mere return of the dishonored bill.

The uniform law requires every dishonored bill to be protested. English law only requires this in the case of foreign bills; in the case of inland bills notice of dishonor takes the place of protest.

Under the uniform law, if due notice of dishonor is not given, the drawer and indorsers are not discharged, but any drawer or indorser who is prejudiced by the omission may bring an action for damages against the holder. Under English law, if due notice of dishonor is not given, the holder loses both his right of recourse on the bill and also his right of action on the consideration for the bill.

To give an illustration, suppose Brown buys a motor car from Jones for £300 and gives him in payment a bill drawn on Smith, payable one month after date. Smith dishonors the bill, and Jones, by some slip, gives notice of dishonor to Brown a day too late. Under English law Brown is discharged from his liability on the bill, and

can keep the motor car without paying for it. Under the uniform law, Brown would be liable either on the bill or in an action for the price, but if he had suffered any loss through getting the notice of dishonor late he could sue Jones for damages. It seems to us that the English law is too severe, while the continental law is too lax. Jones ought to lose his right of recourse on the bill, but Brown ought to be liable to be sued for the price of the motor car, less any damage he may have suffered through getting notice of dishonor too late.

29. The uniform law (art. 57) provides that when a bill is dishonored by nonacceptance, the holder can only recover the amount of the bill, less discount, but plus a commission of one-sixth per cent. English law allows him to recover the full amount of the bill, but does not allow commission. The foreign rule is the more exact, but the English rule is the simpler to apply.

It may be noted that the conference unanimously adopted the English rule that when a bill is dishonored by nonacceptance the holder has an immediate right of recourse against the drawer and indorsers. The continental rule under which the holder is only entitled to demand security is said to be unsatisfactory, and practically unworkable.

Where a bill is dishonored by nonpayment the uniform law substantially agrees with English law, except that it allows, in addition to the other damages, a commission of one-sixth per cent. We can see no sufficient reason for the allowance of this commission.

30. The uniform law (art. 62) provides that where the acceptor of a bill fails or suspends payments or commits an act of bankruptcy before maturity, the holder may cause the bill to be protested, and at once go back on the drawer and indorsers, as if the bill had been dishonored by nonacceptance. This is a very useful provision, but it could only be introduced into English law if a large number of other commercial countries adopted it, because the drawer or indorser of a foreign bill would be entitled to say that, by the law of his country, when the bill has been accepted, the holder was bound to present it for payment, and protest it for nonpayment, as the condition of his right of recourse. Under the present English law, when the acceptor becomes bankrupt or insolvent or suspends payment before the bill matures, the holder may cause the bill to be protested for better security. The only effect of this proceeding is to enable the bill to be accepted for honor, if there happens to be any person willing so to accept it. The remedy thus given to the holder is wholly inadequate. The holder of a bill which has been accepted by a person who becomes insolvent is in a worse position than the holder of a bill which has been refused acceptance.

31. The uniform law (art. 65) requires that where a domiciled bill is dishonored, notice of dishonor must be given to the acceptor within the time, and in the form, prescribed for notice of dishonor to the drawer and indorsers. English law in terms provides that "in order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonor should be given to him." We think the English rule is the right one. If the acceptor's agent dishonors the bill, it is his duty to inform the acceptor, unless, of course, he has acted under the acceptor's instructions in refusing payment.



32. According to English law, the duties of the holder are all duties of reasonable diligence. If, with the exercise of reasonable diligence, the holder can not present, or protest, or give notice of dishonor, delay is excused in the case of temporary obstacles and the duties are dispensed with if the obstacles are of a permanent nature. Under the uniform law (art. 67) the duties of the holder are absolute duties, but an exception is made where, through the operation of some insurmountable obstacle (*vis major*), arising at the place where the bill is payable, the holder can not present or protest the bill. No allowance is made for calamities affecting the holder personally, such as the holder's illness or sudden death, or delay in the post. The English rule appears to be the more reasonable one, but it is to be borne in mind that the consequences of the failure of the holder to perform his duties are very different in England and on the continent. In England the holder loses his right of recourse on the bill, and also his right of action on the consideration; but on the continent the holder only loses his right of recourse on the bill, but retains his right of action on the consideration, save so far as the drawer or indorser may have suffered loss through the holder's omission to present or protest in due time.

33. Under English and French law payment for honor may be made by anybody. In the discussion in the conference it was pointed out that this rule was a little too wide. The acceptor of a bill ought not to be allowed to dishonor it, and then pay it for the honor of some party to whom he himself is primarily liable. It seems inconsistent with the contract of acceptance. (See art. 68.)

34. The uniform law (art. 74) provides that the person to whom a bill is issued is entitled to have it drawn in a set. In England this is a matter of arrangement between the parties, and we are not aware that any difficulty has arisen under the English rule. The uniform law further provides that even when a bill has been issued as a sola bill, any subsequent holder may demand a set. It seems to us that this rule might be used vexatiously and give rise to difficulties.

35. The uniform law (art. 79) provides that where the terms of a bill are altered, parties who sign it after the alteration are liable according to the terms of the instrument as altered. Parties who sign before the alteration are liable according to the original terms of the instrument.

Under English common law every unauthorized material alteration of a bill avoided it altogether. The bills of exchange act mitigated this hard rule by providing that where a bill was materially altered and the alteration was not apparent, a holder in due course might enforce the bill according to its original tenor.

The foreign rule appears unduly lax. It draws no distinction between visible and invisible alterations and seems to encourage people to be careless in taking bills which show on the face of them that they have been tampered with.

36. The uniform law (art. 82) contains rules of "prescription." Actions against the acceptor are barred after a lapse of three years from the maturity of the bill, and actions by the holder against a drawer and indorsers are barred after six months from the maturity of the bill. English law contains no such provisions. Bills and notes are subject to the ordinary six-year law of limitations under the act of James I, which applies to all simple contracts.



37. The conference, by unanimous resolution (England standing aside), agreed that noncompliance with stamp laws should never be ground for nullifying a bill of exchange or promissory note, and that stamp laws should only be enforced by money penalties. This is a question on which we would rather express no opinion without hearing what the revenue authorities have to say about it. We would only note that, in the case of checks, English law relies on the pecuniary penalty.

We have now called attention to the main points in which the uniform law differs from English law, and we have given our reasons for thinking that on certain points the foreign rule is the more convenient rule. We suggest that the following amendments in English law may be made at once, as desirable in themselves, without waiting for the adoption by other nations of the uniform law, namely:

1. That days of grace should be abolished.
2. That when a bill falls due on a nonbusiness day, it should be payable on the next succeeding business day.
3. That when the sum payable by a bill is expressed more than once in words, or more than once in figures, and there is a discrepancy, the lesser sum shall be the sum payable.
4. That when a bill is expressed to be payable with interest and no rate of interest is specified, interest at the rate of 5 per cent shall be understood.
5. That where the acceptance consists of the simple signature of the drawee, it must be on the face of the bill.
6. That where a bill is dishonored by nonacceptance, a party who is liable on the bill may nevertheless accept it for honor.
7. That payment for honor by the acceptor of a bill shall be prohibited.
8. That where the holder of a bill loses his right of recourse on the bill by reason of his failure duly to present or protest it, or to give notice of dishonor, he shall not thereby lose his right of action on the consideration, but that if the drawer or indorser whom he sues has been prejudiced by that failure, such drawer or indorser shall be discharged from his liability on the consideration to the extent of any loss he may have suffered.

In order to make clear the effect of these recommendations on the existing English law, we have appended the rough draft of a bill making the required amendments in the bills of exchange act, 1882 (see *post*, p. 113).

We would further suggest, in order to simplify our law—

1. That the bank holiday acts should be consolidated. They are now three in number, and are not very easy to construe together. It is to be noted that the days appointed for bank holidays differ in England, Scotland, and Ireland.
2. That the stamp laws relating to negotiable instruments should be consolidated. The stamp act, 1891, has now been amended eight or nine times and the amendments are very complicated.

## V. COMPARISON OF THE PROPOSED UNIFORM LAW AND THE ENGLISH LAW.

[Inclosure 1 in No. 16.]

### TRANSLATION OF DRAFT UNIFORM LAW, COMPARED IN PARALLEL COLUMNS WITH THE BILLS OF EXCHANGE ACT, 1882.

PRELIMINARY DRAFT OF THE UNIFORM  
LAW ON BILLS OF EXCHANGE AND  
PROMISSORY NOTES PAYABLE TO ORDER.

BILLS OF EXCHANGE ACT, 1882. (45  
AND 46 VICT., CAP. 61.)

#### CHAPTER I.—*Creation and form of bills of exchange.*

ARTICLE 1. A bill of exchange must contain—

1. A statement that is a bill of exchange.<sup>1</sup> This statement must be written in the body of the instrument and expressed in the language of the instrument.

2. An unconditional order to pay a sum certain in money.

3. The name of the party who is to pay.

4. A statement of the time of payment.

5. A statement of the place where payment is to be made.

6. The name of the payee.

7. A statement of the place where the bill is drawn, and the date of drawing.

8. The signature of the drawer.

A bill of exchange may be drawn in one place on another, or may be drawn and payable in the same place. It is not necessary that it should specify the value given therefor.

ART. 2. An instrument in which any of the statements indicated in article 1 are wanting, does not constitute a bill of exchange, except in the cases mentioned in the next paragraph.

A bill of exchange in which no time of payment is indicated is deemed to be payable at sight.

A bill of exchange which does not indicate the place of payment is deemed to be payable at the residence (domicile) of the drawee, provided that this residence is either expressly mentioned in the bill, or can be clearly gathered from the terms of the bill.

SEC. 3. (1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person, or to bearer.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money is not a bill of exchange.

\* \* \* \*

(4) A bill is not invalid by reason—

(a) That it is not dated;

(b) That it does not specify the value given, or that any value has been given therefor;

(c) That it does not specify the place where it is drawn or the place where it is payable.

And see sections 6 and 7.

See above, and see section 10 (1), which provides that a bill is payable on demand in which no time of payment is expressed.

<sup>1</sup> Convention: Article 2.—In modification of article 1, paragraph 1 (1), of the uniform law, every contracting State may provide that bills of exchange drawn in its own territory which do not contain a statement that they are bills of exchange, are nevertheless valid, provided that they contain an express statement that they are payable to order.

A bill of exchange which does not indicate the place where it is drawn is deemed to have been drawn in the place where the drawer resides, but subject to the like conditions.

**ART. 3.** A bill of exchange may be drawn payable to the drawer's order.

The drawer and drawee may be the same person. In this case the instrument is deemed to be a promissory note, if it is payable to the drawer's order.

A bill of exchange may be drawn for the account of a third person.

It may be drawn payable to bearer.<sup>1</sup>

**ART. 4.** Subject to the case of bills payable to bearer, every bill of exchange, even if it is not expressly drawn payable to order, may be transferred by endorsement.

The drawer may prohibit the transfer of a bill of exchange by inserting therein the words "not to order," or any equivalent expression. In this case the bill can only be transferred with the formalities and effects of an assignment according to the civil law ("cession").

**ART. 5.** A bill of exchange may be made payable at the residence of a third person in the place where the drawee resides. It may also be made payable at some other place.

A bill of exchange may indicate a person who is to pay it in case of need. The drawer may also expressly indicate a person who is to accept it in case of need.

**ART. 6.** In the case of a bill of exchange payable at sight, or at a cer-

**SEC. 5.** (1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

And see section 3.

**SEC. 8.** (1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

See section 45 (4).

**SEC. 15.** The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

**SEC. 9.** (1) The sum payable by a bill is a sum certain within the mean-

<sup>1</sup> Convention: Article 3.—In modification of article 3, paragraph 4, of the law, every contracting State may provide that a bill of exchange drawn payable to bearer shall be considered as null and void in its territories, if the bill has been drawn, accepted, guaranteed ("avalisée"), or if it is payable in that territory.

tain period after sight, the drawer may insert a provision that the amount shall be payable with interest. A provision for payment of interest in any other bill of exchange is to be disregarded (*"réputée non écrite"*).

The rate of interest should be specified. If it is not specified, the rate shall be 5 per cent.

Interest runs from the date of the bill of exchange, in the absence of any stipulation to the contrary.

ART. 7. If the sum payable by a bill of exchange is expressed in words, and also in figures (and there is a discrepancy) the sum expressed in words is the sum payable.

If the sum payable is expressed more than once in words, or more than once in figures (and there is a discrepancy), then the lesser sum is the sum payable.

ART. 8. If a bill of exchange bears the signature of parties not having capacity to contract, the liability of the other parties to the bill who have signed it is not thereby affected.

ART. 9. Whoever signs a bill of exchange as agent or representative of another person is himself liable on the bill when he had no authority to act for that person, or when he has exceeded his powers.

ART. 10. The drawer guarantees the acceptance and payment of the bill.

Any stipulation by which he refuses to guarantee the payment shall be disregarded.

He may insert the stipulation "*retour sans frais*" (i. e., expenses waived).

ing of this act, although it is required to be paid—

(a) With interest.

\* \* \* \*

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

SEC. 9. (2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

Assumed, but not expressly stated, in sections 54 (2) and 55 (1) and (2).

SEC. 26. (1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favorable to the validity of the instrument shall be adopted.

SEC. 31. (5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

SEC. 55. (1) The drawer of a bill by drawing it—

(a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonored he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonor be duly taken.

SEC. 16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(1) Negating or limiting his own liability to the holder.

(2) Waiving as regards himself some or all of the holder's duties.

CHAPTER II.—*Indorsement.*

**ART. 11.** The indorsement must be written upon the bill of exchange or upon a sheet attached (*allonge*), or on a "copy." It must be signed by the indorser.

An indorsement is valid although the person to whom it is indorsed is not named, or although the indorser has done no more than put his signature upon the back of the bill, or on an "*allonge*," or on the back of a "copy" (indorsement in blank).

A bill of exchange may be indorsed to the drawee whether he has accepted or not, to a previous indorser, or to the drawer, and these parties may again indorse it.

**ART. 12.** The indorsement of a bill of exchange payable to bearer operates only as a guarantee (*aval*) for the drawer.

On every other bill of exchange an indorsement to bearer is null and void.

A partial indorsement is null and void.

Every condition added to an indorsement shall be disregarded.

**ART. 13.** An indorsement transfers to the holder all the rights flowing from a bill of exchange.

The indorser, in the absence of any stipulation to the contrary, guarantees the acceptance and payment of the bill.

**SEC. 32.** An indorsement in order to operate as a negotiation must comply with the following conditions, namely:

(1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words is sufficient.

An indorsement written on an "*allonge*," or on a "copy" of a bill issued or negotiated in a country where "*copies*" are recognized, is deemed to be written on the bill itself.

**SEC. 37.** Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this act, reissue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

**SEC. 56.** Where a person signs a bill otherwise than as drawer or acceptor he thereby incurs the liabilities of an indorser to a holder in due course.

**SEC. 32. (2)** It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

**SEC. 33.** Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

**SEC. 31. (1)** A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

**SEC. 56. (2)** The indorser of a bill by indorsing it—

(a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonored he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonor be duly taken.

And see section 16, *ante*, page 85.



**ART. 14.** If the indorsement is in blank, the holder may—

1. Fill in the blank with his own name.
2. Fill in the blank with the name of some other person.
3. Transfer the bill to a third person without indorsing it and without filling up the blank.
4. Again indorse it in blank or to another person by name.

**ART. 15.** An indorsement may indicate a person who is to pay the bill in case of need.

An indorsement may negative the guaranty of payment unless the indorser is himself the drawer.

It may prohibit the holder from further indorsing the bill, and in this case the indorser is not liable to subsequent parties to whom the bill has been transferred.

It may contain the stipulation "retour sans frais."

Stipulations inserted in an indorsement affect only the indorser who inserts them.

**ART. 16.** The holder of a bill of exchange, bearing indorsements, is deemed to be the lawful holder if he can establish his right to it by an uninterrupted chain of indorsements, even if the last indorsement is in blank.

Where an indorsement in blank is followed by another indorsement, the party whose indorsement it is is presumed to have acquired the bill under the indorsement in blank.

**ART. 17.** The parties liable on a bill of exchange can only set up against the holder—

1. Defenses which they have directly against the holder himself.
2. Defenses founded on their incapacity to contract.

**SEC. 34. (1)** An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

**SEC. 15.** The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may think it.

**SEC. 16.** The drawer of a bill and any indorser may insert therein an express stipulation—

(1) Negating or limiting his own liability to the holder.

(2) Waiving as regards himself some or all of the holder's duties.

And see section 35.

**SEC. 24.** Subject to the provisions of this act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from settling up the forgery or want of authority.

Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery.

**SEC. 8. (3)** A bill is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

**SEC. 38.** The rights and powers of the holder of a bill are as follows—

(1) He may sue on the bill in his own name—

(2) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well

3. Defenses arising out of the actual text of the bill itself.

4. Defenses founded on the provisions of the present uniform law.

Where the holder is not a holder in good faith, the parties liable can avail themselves of defenses which they could have set up against the preceding holder.

ART. 18. When an indorsement contains the expression "for recovery of the amount" (*valeur en recouvrement*), or "for collection," or "by delegation," or any other expression implying an authority, the holder is deemed to be the agent of the indorser.

He can exercise all the rights flowing from the bill of exchange, but he can not indorse the bill except on agency terms.

The parties liable can only set up against the holder defenses which could be set up against the indorser if the agency indorsement had not been made.

ART. 19.<sup>1</sup> When an indorsement contains the expression "value as security" (*valeur en garantie*) or "value in pledge," or any other expression implying that it is given by way of security, the holder is deemed to be a pledgee creditor.

He may exercise all the rights flowing from the bill of exchange, but can only indorse the bill by way of agency.

The parties liable can only set up against the holder defenses which they could have set up against the party who indorsed the bill by way of pledge, except in the case of bad faith.

ART. 20. An indorsement after maturity has the same effect as an indorsement before maturity. However, if this indorsement has been made after the protest for nonpayment has been drawn up, or after the time fixed by law for drawing it up, it only operates as an ordinary assignment regulated by the civil law.

as from mere personal defenses available to prior parties among themselves and may enforce payment against all parties liable on the bill.

(3) Where his title is defective (a), if he negotiates the bill to a holder in due course that holder obtains a good and complete title to the bill, and (b) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

SEC. 35. (1) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay D. or order for collection."

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorize him to do so.

(3) Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

No corresponding provision.

SEC. 36. (1) Where a bill is negotiable in its origin, it continues to be negotiable until it has been (a) restrictively indorsed or (b) discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

<sup>1</sup> Convention: Article 4.—Each contracting State may provide, in modification of article 19 of the law, that any indorsement made in its territory expressing that it is by way of pledge, shall be disregarded.

In this case the expression shall be equally disregarded by the other States.

(3) A bill payable on demand is deemed to be overdue within the meaning, and for the purposes, of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonored, any person who takes it with notice of the dishonor takes it subject to any defect of title attaching thereto at the time of dishonor, but nothing in this subsection shall affect the rights of a holder in due course.

### CHAPTER III.—Acceptance.

ART. 21. The holder may up to maturity present a bill of exchange to the drawee for acceptance. Presentment may be made by any person in possession of the instrument.

Presentment must be made at the place where the drawee resides, and the place indicated alongside the drawee's name is deemed to be that place.

Acceptance can only be demanded on a business day.

SEC. 41. (1) A bill is duly presented for acceptance which is presented in accordance with the following rules:

(a) The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue;

(b) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only;

(c) Where the drawee is dead, presentment may be made to his personal representative;

(d) Where the drawee is bankrupt, presentment may be made to him or to his trustee;

(e) Where authorized by agreement or usage, a presentment through the post office is sufficient.

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonored by nonacceptance—

(a) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill;

(b) Where, after the exercise of reasonable diligence, such presentment can not be effected;

(c) Where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonored does not excuse presentment.

SEC. 39. (1) Where a bill is payable after sight, presentment for ac-

ART. 22. There may be a stipulation in any bill of exchange requiring ac-

ceptance or requiring acceptance within a certain period of time. In the latter case, if the last day for presentment is a nonbusiness day, presentment may be made on the next following business day.

A bill of exchange may stipulate that it is to be presented for acceptance before a certain day. But prohibition of presentment for acceptance is not allowed either in domiciled bills or in the case of bills payable after sight.

An indorser may insert in his indorsement a stipulation requiring the holder to present the bill for acceptance. On the other hand, an indorser may not insert the stipulation "not for acceptance" when the bill was a bill which could have been presented for acceptance.

Any stipulation prohibited by the provisions of this article shall be disregarded.

ART. 23. Bills of exchange payable after sight must be presented for acceptance within 6 months of their date, without prolongation on account of distance. This period may be shortened either by the drawer or by an indorser. It may be prolonged by the drawer for a period not exceeding 6 months. If the stipulated prolongation exceeds 6 months, the bill must nevertheless be presented within 12 months of its issue.

ART. 24. The acceptance must be in writing on the bill of exchange itself. It may be expressed by the word "accepted," or by any other equivalent word, followed by the signature of the drawee. The mere signature of the drawee written on the face of the bill constitutes an acceptance.

An acceptance need not be dated. It must, however, indicate the date of presentment in the case of a bill which is payable at a certain period after sight, or which must, by its express terms, be presented for acceptance within a specified time.

An acceptance written on an "allonge," or on a "copy," or on a separate document, does not bind the drawee as an acceptor of a bill of exchange.

ART. 25. An acceptance must be unqualified, but it may be an acceptance for part only of the sum payable.

Every other qualification which varies the effect of the bill as drawn

ceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) Where the holder of a bill drawn payable elsewhere than at the place of business or residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

SEC. 40. (1) Subject to the provisions of this act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

SEC. 17. (1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions, namely:

(a) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.

(b) It must not express that the drawee will perform his promise by any other means than the payment of money.

SEC. 19. (1) An acceptance is either (a) general or (b) qualified.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in

may be treated by the holder as equivalent to a refusal to accept. Nevertheless, the acceptor is bound according to the terms of his acceptance.

express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

(a) Conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated.

(b) Partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

(c) Local; that is to say, an acceptance to pay only at a particular specified place.

SEC. 44. (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonored by nonacceptance.

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this subsection do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

ART. 26. When the drawer has indicated in a bill of exchange a place of payment other than the residence of the drawee, without designating the person who is to pay for the drawee, the acceptor in his acceptance must indicate the person by whom payment is to be effected. In default of this indication, the bill is payable by the acceptor himself at the place of payment.

If a bill is payable at the residence of the drawee, the drawee may in his acceptance indicate another address for payment in the place where the bill is payable.

ART. 27. When a bill is presented for acceptance to the drawee, he must give his reply to the holder on the first business day which follows presentation.

The holder is not bound to leave the bill in the hands of the drawee.

ART. 28. By accepting a bill, the drawee undertakes to pay it at maturity to the lawful holder.

If the bill is dishonored by non-payment, the holder, even if he is also

No corresponding provision.

SEC. 42. (1) When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonored by nonacceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

SEC. 54. The acceptor of a bill, by accepting it—

(1) Engages that he will pay it according to the tenor of his acceptance;



the drawer, has a direct action on the bill against the acceptor.

**ART. 29.** The drawee who has written an acceptance on the bill can not cancel it if he has given written notice to the holder or his agent, or to any other person who has signed the bill, that he has accepted it, or if he has delivered up the bill.

**ART. 30.** The drawee is deemed to have refused acceptance (apart from express refusal) when he has not accepted the bill on the first business day following presentation, or when he has canceled his acceptance having still the right so to do (art. 29), or where in accepting he has varied the provisions of the bill as drawn.

#### CHAPTER IV.—*Acceptance for honor.*

**ART. 31.** After protest for nonacceptance, or after mere refusal to accept when the bill of exchange is not protestable (in accordance with art. 62), the bill may at any time before maturity be accepted for the honor of the drawer, or one of the indorsers, or for anyone else who has signed the bill.

The bill may be accepted for honor by a third party, or by the drawee, or by any person who is already liable on the bill.

(2) Is precluded from denying to a holder in due course—

(a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill.

(b) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement.

(c) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

**SEC. 21.** (1) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to, or according to, the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

**SEC. 43.** (1) A bill is dishonored by nonacceptance—

(a) When it is duly presented for acceptance, and such an acceptance as is prescribed by this act is refused or can not be obtained, or

(b) When presentment for acceptance is excused and the bill is not accepted.

**SEC. 65.** (1) Where a bill of exchange has been protested for dishonor by nonacceptance, or protested for better security and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn.

(2) A bill may be accepted for honor for part only of the sum for which it is drawn.

(3) An acceptance for honor *supra* protest in order to be valid must—

(a) Be written on the bill and indicate that it is an acceptance for honor.

(b) Be signed by the acceptor for honor:

(5) Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance, and not from the date of the acceptance for honor.

**ART. 32.** When the drawer, under article 5, paragraph 2, has indicated a case of need in the place of payment to accept the bill, the holder must within a reasonable time present the bill to the case of need for acceptance, and cause the bill to be protested if the acceptance is refused. If he omit so to do, he loses his right of recourse before maturity in the cases mentioned in articles 56 and 63 (provisional).

In all other cases the holder has the option to refuse an acceptance for honor.

**ART. 33.** An acceptance for honor must be on the bill itself. It must be signed by the acceptor for honor. It should state for whose honor it is given, and, in default of any such statement, it is deemed to be an acceptance for the honor of the drawer.

An acceptor for honor must give notice of his intervention to the party for whose honor he has accepted. This notice must be given by registered letter not later than the second business day after acceptance.

The party for whose honor the bill has been accepted, thus notified, must himself give notice to the party immediately liable to him not later than the second business day after he has received his notice, and so on up to the drawer.

**ART. 34.** By accepting for honor the acceptor for honor becomes liable to all indorsers subsequent to the party for whose honor he accepted.

This obligation is discharged if the bill, after dishonor by nonpayment, is not presented for payment to the acceptor for honor and if the presentment is not recorded in the protest not later than the last day allowed for protesting the bill for nonpayment.

The holder who takes an acceptance for honor loses his immediate right of recourse before maturity against previous parties, as provided by articles 56 and 63.

In spite of an acceptance for honor the party for whose honor it has been given, and the parties liable to him, can demand from the holder, in exchange for payment of the sum mentioned in article 57, the delivery up of the bill and of the protest for non-acceptance if such there be. The party to whom the bill has so been delivered up has an immediate right of recourse against the parties liable to him.

No corresponding provision.  
See section 15 as to holder's option.

**SEC. 65. (4)** Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

And see above.

**SEC. 66. (1)** The acceptor for honor of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance if it is not paid by the drawee, provided it has been duly presented for payment, and protested for nonpayment, and that he receives notice of these facts.

(2) The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

**SEC. 67. (1)** Where a dishonored bill has been accepted for honor supra protest, or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor, or referee in case of need.

(2) Where the address of the acceptor for honor is in the same place where the bill is protested for nonpayment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honor is in some place other than the place where it was protested for nonpayment, the bill must be forwarded not later than the

day following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or nonpresentment for payment.

(4) Where a bill of exchange is dishonored by the acceptor for honor it must be protested for nonpayment by him.

#### CHAPTER V.—*"Aval."*

ART. 35. The payment of a bill of exchange may be guaranteed by an "aval."

The "aval" may be given either by a person who is not a party to the bill or by a person who is a party to the bill, provided that in the latter case the holder's rights of recourse are thereby augmented.

ART. 36. An "aval" must be written on the bill of exchange or on an "allonge" or on a "copy."<sup>1</sup>

An "aval" is created by the expression "bon pour aval," or any equivalent expression, followed by signature.

It is deemed to be created by the simple signature of the giver of the "aval" placed on the face of the bill, but this does not apply to the signature of the drawee (art. 24).

An "aval" must state for whose account it is given. In default of any such statement it is deemed to be given for the drawer.

ART. 37. The giver of an "aval" is jointly and severally liable with the party whose signature he has guaranteed.

He is liable although the engagement of the party whom he has guaranteed is invalid for any reason other than defect of form.

When he pays the bill he has a right of recourse against the party whom he guaranteed and against the parties liable to that party.

#### CHAPTER VI.—*Time of Payment.*

ART. 38. A bill may be drawn and payable—

1. On a fixed day.<sup>2</sup>
  2. At a fixed period after date.
  3. At sight.
  4. At a fixed period after sight.
- Usances are abolished.

SEC. 56. When a person signs a bill otherwise than as drawer or indorser, he thereby incurs the liabilities of an indorser to a holder in due course.

No corresponding provision.

No corresponding provision.

SEC. 10. A bill is payable on demand—

- (a) Which is expressed to be payable on demand, or at sight, or on presentation; or
- (b) In which no time for payment is expressed.

<sup>1</sup> Convention: Article 5.—In modification of article 6, paragraph 1, of the uniform law, every contracting State may provide that to guarantee a bill in its own territory the "aval" may be given in this territory by separate document indicating the place where it is given.

<sup>2</sup> Convention: Article 6.—In addition to article 38, paragraph 1, of the law, every contracting State may allow bills payable at a fair or market ("en foire"), and fix the date of their maturity.

Such bills of exchange shall be recognized as valid by the other States.

Bills of exchange payable at successive due dates (by installments) are null and void.

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

SEC. 11. A bill is payable at a determinable future time within the meaning of this act which is expressed to be payable—

(1) At a fixed period after date or sight.

(2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

SEC. 9. (1) The sum payable by a bill is a sum certain within the meaning of this act, although it is required to be paid—

(b) By stated installments.

(c) By stated installments, with a provision that upon default in payment of any installment the whole shall become due.

SEC. 14. Where a bill is not payable on demand, the day on which it falls due is determined as follows:

(1) Three days, called "days of grace," are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that—

(a) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day;

(b) When the last day of grace is a bank holiday (other than Christmas Day, or Good Friday) under "The bank holidays act, 1871," and acts amending or extending it, or when the last day of grace is a Sunday and a second day of grace is a bank holiday, the bill is due and payable on the succeeding day.

See above.

SEC. 45. (2) When the bill is payable on demand, then, subject to the provisions of this act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the na-

ART. 39. When a bill of exchange falls due on a legal holiday, or on a day when payment can not be legally demanded, it is payable on the next succeeding business day.

ART. 40. Days of grace—whether "legal" or "judicial"—are disallowed.

ART. 41. A bill of exchange payable at sight is payable on presentation. It must be presented for payment not later than six months after its date, without extension of time on account of distance. This period of time may be abridged by the drawer or by an indorser. It can only be extended by the drawer for a period not exceeding six months. If the extension ex-

ceeds six months, the time for presentment is reduced to one year.

ART. 42. Where the bill is payable after sight, the time begins to run from the date of acceptance or from the date of protest for nonacceptance.

If the acceptance is not dated, the holder must cause the bill to be protested, and the time begins to run from the date of the protest.

If the acceptance of a bill after sight is not dated, and the bill has not been protested in respect of the omission, the maturity must be calculated from the last day for presentment as determined by article 23.

ART. 43. In calculating periods after date and periods after sight, the day from which time is to begin to run must be excluded.

ART. 4. The maturity of a bill drawn payable one or more months after date takes effect on the corresponding day of the month in question. If there is no corresponding date the bill is payable on the last day of that month.

When a bill is payable at one or more months after date or after sight, plus a half-month, the due date must be determined by first counting entire months.

ART. 45. The expression "payable at the half-month" (mid-January, mid-February, etc.) mean the 15th day of the month.

When a bill of exchange contains the expression "eight days" or "fifteen days," this is to be construed as meaning 8 or 15 effective days, and not 1 week or 2 weeks.

ture of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

SEC. 14. (3) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for nonacceptance, or for nondelivery.

SEC. 18. (3) When a bill payable after sight is dishonored by nonacceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

SEC. 12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Provided that—

(1.) Where the holder in good faith and by mistake inserts a wrong date; and

(2.) In every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

SEC. 14. (2) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

SEC. 14. (4) The term "month" in a bill means calendar month.

No corresponding provision.



The expression "half-month" means a period of 15 days.

ART. 46. When a bill of exchange is payable on a particular day in a place where the calendar differs from the calendar of the place of issue, the date of maturity must, in the absence of any stipulation to the contrary, be determined according to the calendar of the place of payment.

When a bill of exchange payable after date is drawn in one place on another having a different calendar, the time must be calculated according to the calendar of the place where the bill is drawn, unless there be a stipulation to the contrary.

When a bill of exchange is payable at a certain period after sight, the time must be calculated according to the calendar of the place where the bill was presented for acceptance.

The provisions of paragraph 2 apply to the calculation of the time for presentment of bills payable at sight or after sight.

#### CHAPTER VII.—*Payment.*

ART. 47. The holder may present a bill of exchange for payment on the day on which payment may be demanded, or on either of the two succeeding business days.<sup>1</sup>

ART. 48. The drawee is entitled to demand that a bill which he has paid shall be delivered up to him with the holder's receipt.

The holder is not entitled to refuse partial payment.<sup>2</sup>

In case of partial payment the drawee may demand that it shall be specified on the bill of exchange, and that a receipt should be given to him.

ART. 49. The holder of a bill of exchange can not be compelled to receive payment thereof before maturity.

If the drawee pays a bill of exchange before its maturity, he is re-

No corresponding provision.

SEC. 45. Subject to the provisions of this act a bill must be duly presented for payment. If it be not so presented, the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules:

(1) Where the bill is not payable on demand, presentment must be made on the day it falls due.

SEC. 52. (4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

SEC. 59. (1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the ma-

<sup>1</sup> Convention: Article 7.—Each contracting State may supplement article 47 of the law by providing that in the case of a bill payable in its territory, the holder must present the bill on the day of its maturity, provided that any breach of this duty shall only give rise to an action for damages.

It will be in the option of the other States to determine how far they will give effect to such an obligation.

<sup>2</sup> Convention: Article 8.—In modification of article 48, paragraph 2, of the law, every contracting State may authorize the holder in its own territory to refuse partial payment, if partial payment is not tendered to him at his own residence, or if it is tendered to him after protest.

This right of the holder must be allowed by the other States.

sponsible for the validity of the payment.

A drawee who pays a bill at maturity is not discharged unless he has verified the regularity of the chain of indorsements which are uncanceled. He is not compelled to verify the indorsers' signatures.

ART. 50. When a bill of exchange is payable in money which is not current in the place of payment, the amount can be paid according to its value at the time of payment in the currency of the country, unless the drawer has stipulated that it should be payable only in the currency indicated in the bill (stipulation for payment in foreign currency). The laws and usages of the place of payment determine the value of the foreign currency.

Nevertheless, the drawer may in the bill stipulate for another mode of calculation, and in this case the amount payable, calculated accordingly, must be paid in the currency of the country.

ART. 51. When a bill of exchange is not presented for payment within the time fixed by article 47, the acceptor is authorized to deposit the amount with the competent authority at the expense and risk of the holder.

#### CHAPTER VIII.—*Recourse in case of nonacceptance or nonpayment.*

ART. 52. A refusal of acceptance or payment must be certified by an authentic act (protest for nonacceptance or nonpayment).<sup>1</sup>

Protest for nonpayment can not be made on the day when a bill of exchange is payable. It must be drawn up on one of the two business days which follow that day.

turity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

SEC. 60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

N. B.—In any other case payment to a person who holds under a forged indorsement is invalidated by section 24.

SEC. 72. (4) Where a bill is drawn out of but payable in the United Kingdom, and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

No corresponding provision, this procedure being unknown to English law.

SEC. 51. (1) Where an inland bill has been dishonored, it may, if the holder think fit, be noted for nonacceptance or nonpayment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2) Where a foreign bill, appearing on the face of it to be such, has been dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill, which has not

<sup>1</sup> Convention: Article 9.—In modification of article 52 of the law, every contracting State may provide that, with the assent of the holder, instead of protests there may be substituted a declaration dated and written on the bill signed by the drawee and transcribed in a public register within the time fixed for protest.

The other States must recognize any such declaration.

been previously dishonored by non-acceptance, is dishonored by nonpayment, it must be duly protested for nonpayment. If it be not so protested, the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonor is unnecessary.

(3) A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

(4) Subject to the provisions of this act, when a bill is noted or protested, it must be noted on the day of its dishonor. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

No corresponding provision.

**ART. 53.** When the stipulation "retour sans frais" is inserted in a bill of exchange by the drawer, the holder can exercise his right of recourse without causing the bill to be protested either for nonacceptance or for nonpayment.

If, in spite of this stipulation, the holder causes the bill to be protested, he must bear the costs of the protest himself.

The stipulation "retour sans frais" does not release the holder from the duty of presenting the bill within the time required by law, nor from giving notice to his immediate indorser and to the drawer as provided by article 55. Nonpresentment within the required time deprives the holder of his right of recourse in accordance with article 64. The burden of proving that the bill has not been duly presented lies with the party who seeks to set it up against the holder.

The stipulation "retour sans frais," when inserted by the drawer avails for all parties who have signed, notwithstanding any stipulation to the contrary in the indorsements.

When this stipulation is inserted in an indorsement, the expenses of protest, if the protest has been drawn up, can be recovered from all parties liable on the bill.

**ART. 54.** Protest must be made at the residence of the drawee or of the person required to pay, or of the case of need, or of the acceptor for honor. (Provisional.)

**SEC. 51. (6)** A bill must be protested at the place where it is dishonored: Provided that—

(a) When a bill is presented through the post office, and returned by post dishonored, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day.

(b) When a bill drawn payable at the place of business or residence of

**ART. 55.** The holder must give notice of dishonor by nonacceptance or nonpayment to his immediate indorser on one of the two business days which follow the day for protest, or which follow the presentment where there is a stipulation "*retour sans frais*."

Each indorser within the like time must give notice of dishonor to the preceding indorser, furnishing him with a copy of the notice which he has himself received, and so on until the drawer is reached. The time begins to run from the reception of notice from the preceding party.

In addition, the holder must, before the expiration of four business days, give direct notice of nonpayment to the drawer.<sup>1</sup>

These notices must be given by registered letter. It is sufficient that the registered letter be posted within the times prescribed by the foregoing provisions.

The registered letter may be supplemented by a letter delivered by hand ("*lettre missive*"), provided that the delivery be certified by a dated and signed receipt from the addressee.

When an indorser has not indicated his address, or where an indorsement is illegible, notice must be given to the previous indorser.

A party who does not give notice of nonpayment within the time required by law, does not lose his right of recourse, but he is responsible for the loss, if any, caused by his omission.

some person other than the drawee has been dishonored by nonacceptance. It must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

**SEC. 48.** Subject to the provisions of this act when a bill has been dishonored by nonacceptance or by nonpayment, notice of dishonor must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged: Provided that—

(1) Where a bill is dishonored by nonacceptance and notice of dishonor is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission.

(2) Where a bill is dishonored by nonacceptance and due notice of dishonor is given, it shall not be necessary to give notice of a subsequent dishonor by nonpayment unless the bill shall in the meantime have been accepted.

**SEC. 49.** Notice of dishonor in order to be valid and effectual must be given in accordance with the following rules:

(1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who at the time of giving it is himself liable on the bill.

(2) Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

(3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill and intimate that the bill has been dishonored by nonacceptance or nonpayment.

(6) The return of a dishonored bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonor.

<sup>1</sup> Convention: Article 10.—Every contracting State may provide that the notice of nonpayment mentioned in article 55, paragraph 3, of the law, may be given by the public officer whose duty it is to draw up the protest.

(7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

(8) Where notice of dishonor is required to be given to any person, it may be given either to the party himself or to his agent in that behalf.

(9) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be and, with the exercise of reasonable diligence, he can be found.

(10) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.

(11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

(12) The notice may be given as soon as the bill is dishonored and must be given within a reasonable time thereafter.

In the absence of special circumstances, notice is not deemed to have been given within a reasonable time, unless—

(a) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonor of the bill.

(b) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonor of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day, then by the next post thereafter.

Assumed, but not expressly stated in the act.

And see below.

ART. 56. All parties who sign, accept, or indorse a bill of exchange are jointly and severally liable to the holder.

The holder of a bill which has been dishonored by nonacceptance or nonpayment has the right of recourse, either individually or collectively, against the indorsers, against the drawer, and the other parties who have signed, without being compelled to observe the order in which they have rendered themselves liable.

Every party liable on a bill who has taken it up and paid it has the same rights against the parties liable to him ("ses garants").

The exercise of the right of recourse against one of the parties liable



on the bill does not prevent recourse to other parties who have signed it, even though they may be parties subsequent to those first proceeded against.

ART. 57. The holder can recover from the party against whom he exercises his recourse—

1. The amount of the dishonored bill.
2. The expenses of the protest and of the notices given by the holder to his immediate indorser and to the drawer, together with any other necessary expenses.
3. The expenses of reexchange, if such there be.
4. A commission of one-sixth per cent.

Where the right of recourse is exercised before maturity, the amount of the bill is subject to a discount calculated (at the holder's option) either according to the official rate, or according to the market rate obtaining at the date on which the right of recourse is exercised in the place where the holder resides.

If the right of recourse is exercised after maturity, interest at the rate of 5 per cent is recoverable from the time when the bill was payable.

ART. 58. An indorser who has taken up and paid a bill can recover from the parties liable to him (*ses garants*)—

1. The entire sum which he has paid.
2. Interest on the said sum calculated at the rate of 5 per cent from the day on which he paid.
3. Any expenses he has been put to, and in particular the expense of reexchange.
4. A commission of  $\frac{1}{2}$  per cent.

ART. 59. The party against whom recourse is enforced can demand on payment that the bill should be delivered up to him, with the protest and a receipted account.

ART. 60. Every indorser who has taken up and paid a bill of exchange may cancel his own indorsement and the indorsements of subsequent indorsers.

SEC. 57. Where a bill is dishonored, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:

(1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

- (a) The amount of the bill;
- (b) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case;
- (c) The expenses of noting, or, when protest is necessary and the protest has been extended, the expenses of protest.

(2) In the case of a bill which has been dishonored abroad, in lieu of the above damages the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him the amount of the reexchange with interest thereon until the time of payment.

(3) Where by this act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

See above.

No corresponding provision.

No corresponding provision, but accords with English practice.

Every party liable on the bill, whether as drawer or indorser, can demand from the holder, in exchange for payment, the delivery of the dishonored bill and the protest.

ART. 61. When recourse is exercised as the consequence of a partial acceptance, the party who pays the sum uncovered by the acceptance can demand that this payment should be noted on the bill, and that a receipt should be given to him. The holder must furnish him with a certified copy of the bill and the protest. As regards the recourse which is to be exercised by the indorsers one against the other and against the drawer, the copy takes the place of the original bill.

ART. 62. Where the acceptor has become bankrupt or suspended payment (even though not certified by judgment), or where there has been a fruitless execution against his goods, or where he has lost the benefit of the time limit (*bénéfice du terme*) against the holder, the like right of immediate recourse can be exercised as in case of nonacceptance after a protest for nonpayment has been drawn up.<sup>1</sup>

The bankruptcy of the drawer, even in case of nonacceptance, gives the holder no right of proceeding against the indorsers and drawer.

ART. 63. All parties having a right of recourse under articles 56 and 62 may, in the absence of stipulation to the contrary, recover the amount payable by means of a fresh bill (*redraft*), undomiciled, and drawn at sight on one of the parties liable.

The redraft includes, besides the sums mentioned in articles 57 and 58, the brokerage payable for the negotiation of the redraft and the price of the stamp.

If the redraft is drawn by the holder, the sum payable is fixed according to the exchange for sight drafts drawn at the place of payment on the place where the drawer and indorser reside.

If the redraft is drawn by an indorser the amount is fixed according to the exchange for a sight bill drawn in the place where the drawer of the redraft resides on the place where the party on whom the redraft is drawn resides.

No corresponding provision.

SEC. 51. (5) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

No corresponding provision, but accords with English practice as to foreign bills.

<sup>1</sup> Convention: Article 11.—Every contracting State may, when the acceptor resides within its territory, determine the case in which legally constituted insolvency may be assimilated to the cases provided for in article 62, paragraph 1, of the law.

Such assimilations must be recognized by the other States.

ART. 64. After the expiration of the times fixed—

(a) For the presentment of a bill payable at or after sight (articles 23 and 41);

(b) For the presentment of a bill which ought to be presented for acceptance within a specified time as provided by express stipulation (article 22, paragraph 1);

(c) For drawing up a protest for nonpayment (article 52, paragraph 2);

(d) For presentment of the bill for payment where there is a stipulation "retour sans frais" (article 53); the holder loses his rights of recourse against the indorsers, against the drawer, and against all other parties liable on the bill, except the acceptor and the party who has guaranteed the acceptor by "aval."<sup>1</sup>

ART. 65. In the case of a domiciled bill, the fact that the bill is not protested where domiciled does not deprive the holder of his right of recourse against the acceptor. The holder, whether he has protested the bill where it is domiciled or not, must give notice of nonpayment to the acceptor within the time and in the manner provided for by article 55.

ART. 66. The holder who has allowed the acceptor an extension of the time for payment loses his right of recourse against all other parties liable (*tous ses garants*) who have not consented to the extension, unless he has caused the bill to be duly protested.

ART. 67. When there arises an insurmountable obstacle to presenting the bill or drawing up a protest within the time required by law (case of *vis major*) at the place where these acts ought to be done, the time for doing these acts is extended.

The holder must present the bill for payment and cause it to be protested, if necessary, as soon as the *vis major* has ceased to operate.

Nevertheless, when the obstacle caused by *vis major* continues for more than a month from the maturity of the bill, the holder may as soon as the month has expired exercise his right

See section 40 (1) and (2); section 45 (2); and section 51 (2).

SEC. 52. (1) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonor should be given to him.

No corresponding provision, but this is practically the English rule under the general law of principal and surety.

SEC. 51. (9) Protest is dispensed with by any circumstance which would dispense with notice of dishonor. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

SEC. 50. (2) Notice of dishonor is dispensed with—

(a) When, after the exercise of reasonable diligence, notice as required by this act can not be given to, or does

<sup>1</sup> Convention: Article 12.—Every contracting State may provide that in case of loss of right of recourse or of prescription, an action shall lie against the drawer who has not provided cover for the bill, or who has acquired any inequitable gain in respect of it. In the case of prescription the same rule applies to an acceptor who has received cover for the bill or who has acquired any inequitable gain in respect of it.

The question whether the drawer is bound to furnish cover at maturity, or whether the holder has any special rights over this cover, is outside the present law and convention.

of recourse against the drawer and indorsers.

In the case of bills payable at sight, the holder may in the case of *vis major* exercise his right of recourse when the *vis major* has lasted for one month from the day when otherwise the holder would have demanded payment.

In the case of bills payable after sight, the time begins to run one month after the day when the holder would have presented the bill for acceptance if no case of *vis major* had occurred.

Facts personal to the holder or to the person whose duty it is to present the bill or draw up a protest are not considered as cases of *vis major* within the meaning of the foregoing provisions.

not reach the drawer or indorser sought to be charged;

(b) By waiver express or implied. Notice of dishonor may be waived before the time of giving notice has arrived or after the omission to give due notice;

(c) As regards the drawer in the following cases, namely: (1) Where drawer and drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is the person to whom the bill is presented for payment; (4) where the drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill; (5) where the drawer has countermanded payment;

(d) As regards the indorser in the following cases, namely: (1) Where the drawee is a fictitious person, or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill; (2) where the indorser is the person to whom the bill is presented for payment; (3) where the bill was accepted or made for his accommodation.

#### CHAPTER IX.—*Payment for honor.*

ART. 68. Every bill of exchange after protest for nonpayment, or after presentment for payment if the bill contains the stipulation "*retour sans frais*," may be paid for the honor of the drawer, or of an indorser, or of any other person liable on the bill.

The same rule holds good when the holder may exercise his right of recourse for reimbursement before maturity.

Payment for honor may be made by any of the persons who can accept for honor in accordance with article 31, paragraph 2.

Payment for honor must be made not later than the last day for drawing up the protest for nonpayment.

In the case provided for by paragraph 2 of the present article, it must be made before maturity.

ART. 69. When the referees in case of need, or an acceptor for honor, is indicated in the bill as residing in the place of payment, the holder must within the time required by law, present the bill to all of them to obtain payment for honor. If he omits to do so, he loses his right of recourse against any indorser subsequent to the one who has indicated the referee in case of need, or the one for whose account the intervention for honor has taken place. (Provisional.)

ART. 70. Payment for honor must include the total amount payable by the person for whose honor it is made.

SEC. 68. (1) Where a bill has been protested for nonpayment, any person may intervene and pay it *supra* protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn.

See section 67, cited ante, page 94, as to acceptor for honor. No corresponding provision as to case of need.

SEC. 68. (7) Where the holder of a bill refuses to receive payment *supra* protest he shall lose his right of re-

The holder may refuse a partial payment for honor.

If the holder refuses full payment for honor, the parties who would have been discharged by the payment, are discharged.

ART. 71. When a referee in case of need or an acceptor for honor refuses to pay for honor, the refusal must be certified by a protest drawn up within the time required by law, and if it is not so drawn up, the holder loses his right of recourse against the indorsers subsequent to the one who gave the reference in case of need, or the one for whom the intervention took place. (Provisional.)

ART. 72. Payment for honor must be certified in writing on the bill, showing for whose honor it is made. In default of this indication, payment is deemed to have been made for the honor of the drawer.

Where two or more persons offer to pay the bill for honor of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

The bill and the protest must be delivered up to the person who pays for honor.

ART. 73. The payer for honor is subrogated to the rights of the holder as regards the party for whose honor he pays, and all parties liable to that party.

Nevertheless he can not again indorse the bill, and the indorsers subsequent to the party for whose honor it has been paid are discharged.

#### CHAPTER X.—*Bills in a set and copies.*

ART. 74. The drawer must, on demand by the payee, deliver the bill in a set of several parts. The expenses of this must be borne by the payee.

The parts must be identical, and each must be numbered in the body of the instrument, in default of which each part will be deemed to be a separate bill.

Every holder of the bill can require the delivery of a set. For this purpose the holder must address him-

course against any party who would have been discharged by such payment.

SEC. 67. (4) When a bill of exchange is dishonored by the acceptor for honor it must be protested for non-payment by him.

SEC. 68. (2) Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honor *supra* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor which may be appended to the protest or form an extension of it.

(4) The notarial act of honor must be founded on a declaration made by the payer for honor, or his agent in that behalf, declaring his intention to pay the bill for honor, and for whose honor he pays.

(6) The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honor in damages.

SEC. 68. (5) Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honor he pays, and all parties liable to that party.

SEC. 71. (1) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.



self to his immediate indorser, who is bound to lend his name and assistance toward his immediate indorser, and so on, going from indorser to indorser up to the drawer. The indorsers are bound to reproduce their indorsements on the new parts of the set. The expenses occasioned in obtaining the parts of the set fall on the holder who has demanded it.

**ART. 75.** Payment made of one part of the set discharges the bill, and the other unaccepted parts become void. It is unnecessary to stipulate expressly that payment made on one part of a set shall discharge others.

Recourse can not be exercised against an indorser who has indorsed each part of the set to the same person, unless all the parts are given up to him, or unless the holder gives him an indemnity against the loss of his right of recourse against preceding indorsers and the drawer.

On the other hand, an indorser who has indorsed the parts of a set to different holders and subsequent indorsers are held liable on all the parts which have not come back into their hands at the time of payment.

**ART. 76.** When a part of a set is sent for acceptance the person who sends it must indicate on the other parts the name of the person holding this part. This latter person is bound to deliver the said part to the lawful holder of another part.

If he refuses to do so, the holder can not exercise any right of recourse before it has been certified by protest that the part sent for acceptance has not been delivered up to him, and that acceptance or payment can not be obtained on another part.

**ART. 77.** Every holder of a bill of exchange is authorized to make copies of it. The copy must exactly reproduce the original with the indorsements and all other statements upon it. It must specify where the copy ends.

It can be indorsed in the same manner and with the same effects as the original.

**SEC. 71. (2)** Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

No corresponding provision.

**SEC. 32. (1)** An indorsement written on an "allonge," or on a "copy" of a bill issued or negotiated in a country where "copies" are recognized, is deemed to be written on the bill itself.

The copy must specify the holder of the original instrument. If this holder refuses to deliver the copy to the person lawfully entitled to hold the bill, the latter can not exercise his right of recourse against the parties who indorsed the copy until it has been certified by protest that the original has not been given to him; but this is without prejudice to an action for damages, if any, against the person who has wrongfully retained the bill.

**CHAPTER XI.—*Forgery, alteration, and loss of bill.***

**ART. 78.** The forgery of a signature, even if it be that of the drawer or the acceptor, in nowise affects the validity of the obligations flowing from the genuine signatures on the bill.

**ART. 79.** Where any provision of a bill of exchange has been altered, the persons who become parties to it after the alteration are liable on the instrument as altered. The parties before alteration are liable in accordance with the original terms of the instrument.

**ART. 80.<sup>1</sup>** The owner of a lost bill can demand from the drawer another bill of the like tenor following up the chain of indorsements. He must pay the expenses of this.

If the lost bill has been accepted the owner can not demand payment of the new bill unless he gives an indemnity.

**SEC. 54 (2) and SEC. 55 (1) and (2).** Assumed, though not expressly stated.

**SEC. 64. (1)** Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers:

Provided that—

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2) In particular, the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

**SEC. 69.** Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so.

**SEC. 70.** In any action or proceeding upon a bill the court or a judge may order that the loss of the instrument shall not be set up, provided an in-

<sup>1</sup> Convention: Article 18.—In addition to articles 80 and 81 of the law, every contracting State may, as regards its own territory, determine the conditions under which payment of the bill can be demanded on giving an indemnity, and under judicial decision, or can establish a procedure for annulling lost bills.

The other States may determine the conditions under which they will give effect to judicial decisions given in conformity with the foregoing paragraph.

**ART. 81.<sup>1</sup>** Where a bill of exchange has been lost, the lawful holder thereof is not obliged to deliver it up unless he has acquired it in bad faith, or in acquiring it was guilty of gross negligence.

## CHAPTER XII.—*Prescription.*

**ART. 82.<sup>2</sup>** All actions on a bill of exchange against the acceptor and against the person who has guaranteed the acceptor's signature by "aval," are barred after three years, counting from the maturity of the bill.

Actions by the holder against the indorsers, against the drawer, and against parties who have guaranteed them, are barred after six months from the maturity of the bill, or from the date of the protest if it has been drawn up in due time.

Actions by indorser against indorser and against the drawer are barred in six months, counting from the day when the indorser took up and paid the bill, or from the day (before any payment) when the indorser was sued.

Any interruption of prescription operates only with regard to the party to whom the interruption applies.

Every person who has signed the bill or who has been sued on it, must give notice to the party immediately liable to him, in the form and under the penalties provided by article 55. The indorser who receives this notice must communicate it to his immediate indorser, and these notices must be repeated until they reach the drawer.

## CHAPTER XIII.—*Conflict of laws.*

**ART. 83.** The capacity of a person to render himself liable on a bill of exchange is determined by his national law. If this national law adopts the law of another State, this latter law shall be applied.

A person who under the last paragraph is incapable of contracting is nevertheless liable if he has entered into his obligation in the territory of a State according to the law of which he would have the requisite capacity.<sup>3</sup>

demnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

No corresponding provision, but this is English law, except as regards bills held under forged indorsements.

No corresponding provision. The English six-year limitation under the statute of James I applies to bills, as to all other simple contracts.

**SEC. 22. (1)** Capacity to incur liability as a party to a bill is coextensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill, unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to

<sup>1</sup> See last note.

<sup>2</sup> See convention, articles 12 and 14.

<sup>3</sup> Convention: Article 15.—Every contracting State may refuse to recognize the validity of a contract on a bill entered into by one of its subjects, which would only be valid in the territory of other contracting States under the obligation of paragraph 2 of article 83 of the law.

**ART. 84.** The form of any contract on a bill is regulated by the law of the State in the territory of which the contract was made.

**ART. 85.** The form of protest, or for acts necessary to the exercise or preservation of right on a bill of exchange, is determined by the law of the State within whose territory the protest must be drawn up, or the act in question must be done.

**CHAPTER XIV.—Promissory notes to order.**

**ART. 86.** A promissory note to order must contain an unconditional promise to pay a sum certain. It must be dated and indicate the place where it is made. It must specify the name of the person to whom it is payable, the time of payment, and the place where payment must be made. It must be signed by the maker.

It is not necessary that a promissory note to order should specify the value received.

**ART. 87.** All provisions relating to bills of exchange apply to a promissory note payable to order, with the exceptions hereafter mentioned:

receive payment of the bill, and to enforce it against any other party thereto.

No corresponding provision as to conflict of laws.

**SEC. 72.** Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows:

(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made.

Provided that—

(a) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;<sup>1</sup>

(b) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.

**SEC. 72. (3)** The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonor, or otherwise, are determined by the law of the place where the act is done or the bill is dishonored.

**SEC. 83. (1)** A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

**SEC. 89. (1)** Subject to the provisions in this part and, except as by this section provided, the provisions of this act relating to bills of exchange apply,

<sup>1</sup> By article 16 of the draft convention the contracting States can not subordinate to compliance with their stamp laws either the validity of the contracts on a bill of exchange or the exercise of the rights arising therefrom.

They may, however, suspend the exercise of those rights until the stamp provisions have been complied with.

1. The maker is bound in like manner as the acceptor of a bill of exchange. Consequently promissory notes can not be accepted; neither the maker nor the party who has guaranteed his signature by "aval" can set up against a negligent holder that he has lost his rights of recourse. All actions against the maker and the person who has guaranteed his signature by "aval" are barred after three years, counting from the time of payment. A promissory note can not be made in a set; and a promissory note payable to the order of the maker is null and void.

2. In the case of promissory notes payable at a certain time after sight, the time runs from the date of the "visa" of the maker signed by him on the note. The refusal of the maker to give his "visa," or to date it, must be certified by a protest. The maturity of the instrument is then calculated from the date of the protest.

**ARTICLE 88. Additional provision.**

The present law has no application to promissory notes payable to bearer.

with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes; namely, provisions relating to—

(a) Presentment for acceptance.

(b) Acceptance.

(c) Acceptance *supra* protest.

(d) Bills in a set.

(4) Where a foreign note is dishonored, protest thereof is unnecessary.

The English act applies both to notes payable to order and to bearer.





## **VI.—DRAFT OF PROPOSED AMENDMENTS TO THE BRITISH LAW.**

[Inclosure 2 in No. 16.]

### **DRAFT OF A BILL TO AMEND THE BILLS OF EXCHANGE ACT, 1882, BY ASSIMILATING IT IN CERTAIN RESPECTS TO THE LAWS OF OTHER COUNTRIES.**

**Be it enacted, etc. :—**

**I. *Sum payable.*—**(1) At the end of subsection 2 of section 9 of “The bills of exchange act, 1882” (which deals with the sum payable), the following words shall be added, namely:

“Where the sum payable is expressed more than once in words, or more than once in figures, and there is a discrepancy, the lesser sum shall be the sum payable.”

(2) At the end of subsection 3 of the said section 9 the following words shall be added, namely:

“And where the rate of interest is not specified, 5 per cent shall be understood.”

**II. *Computation of the time of payment.*—**Subsection 1 of section 14 of the said act (which deals with the computation of the time of payment) is hereby repealed, and the following provision shall be substituted therefor, namely:

(1) A. “Days of grace are hereby abolished, and when a bill, according to its tenor, falls due on a nonbusiness day, it shall be deemed to be due and shall be payable on the next succeeding business day.”

**III. *Acceptance by simple signature.*—**In paragraph (a) of subsection 2 of section 17 of the said act (which deals with the requisites of an acceptance) after the words “signature of the drawee” the words “on the face of the bill” shall be inserted.

**IV. *Who may accept or pay for honor.*—**In subsection 1 of section 65 of the said act (which deals with acceptance for honor) the words “not being a party already liable thereon” shall be repealed; and in subsection 1 of section 68 (which deals with payment for honor) after the words “any person” the words “other than the acceptor” shall be inserted.

**V. *Action on consideration.*—**After section 52 of the said act the following section shall be added, namely:

“52 A. Where the drawer or indorser of a bill is discharged from his liability on the instrument by reason of the holder’s failure duly to present it or protest it or to give notice of dishonor, the drawer or indorser shall not thereby be discharged from his liability on the consideration for the bill, unless he has been prejudiced by the holder’s failure to perform his duties, and then only to the extent of any loss he may have suffered.”

**VI. *Short title and commencement.*—**(1) This act may be cited as “The bills of exchange act, 1910,” and “The bills of exchange act, 1882,” “The bills of exchange (crossed cheques) act, 1906,” and this act may be cited together as “The bills of exchange acts, 1882 to 1910.”

(2) This act shall come into operation on the 1st day of January, 1912.



## VII.—ANALYSIS OF THE PROPOSED UNIFORM LAW IN RELATION TO THE EXISTING BRITISH LAW.

[From the inaugural address of Frederick Huth Jackson, Esq., as president of the Institute of Bankers, November 16, 1910.]

The British Government, after some hesitation, decided to be represented at the conference, but suggested that its scope should be limited in the first instance to preparing a statement showing how the laws of the various nations differed, and the inconvenience arising from such differences. (Blue Book, p. 10.) But the other nations consulted did not agree to this limitation and the conference met on the basis of having a free hand to deal with the whole question as it might seem best.

### PROCEDURE OF THE CONFERENCE.

Mr. Asser's first step was to draw up a Questionnaire, raising 89 points, and each of the 35 nations who joined the conference was asked to send in a memorandum specifying what the law ought to be on each of those points. (Blue Book, pp. 4 to 9.) Under instructions from the foreign office, the British delegates prepared a memorandum showing what the English law actually was on each of the points raised, without entering on the very debatable questions as to what it ought to be. This memorandum (Blue Book, p. 14) was considered and approved by an inter-departmental committee, on which the foreign office, the colonial office, and the board of trade were represented. That committee further considered the attitude which was to be taken up by the British delegates at the conference. Our final instructions defined clearly the position we were to take up. We were empowered to discuss any proposals that might be brought before the conference, and in so doing to emphasize the facts; first, that the rules of law in force in the United Kingdom have been adopted substantially unchanged in the British oversea dominions; and, secondly, that the English law merchant is an integral part of the common law and, broadly speaking, English law draws no distinction between traders and nontraders. We were to point out that in the United Kingdom there are no special tribunals of commerce, and that any dispute which may arise on a bill of exchange is determined by the ordinary tribunals as part of their ordinary business. We were not to hold out any hope that, as a general rule, English rules of law were likely to be substantially modified and brought into conformity with continental rules, particularly in cases where the English rule prevails, not only in the United Kingdom, but also throughout the English-speaking world. It was left open to us, however, to argue in favor of the English rules, and to point

out to the foreign delegates the advantages of adopting them. Our instructions went on to say:

"There are, nevertheless, certain points on which the English law is doubtful, or where there are points of divergence between the different English-speaking communities. In such cases it would evidently be desirable if a uniform rule could be arrived at, and the uniformity of the rule is probably of more importance than the nature of the rule itself."

Before going to the conference, we had the advantage of meeting Mr. C. A. Conant, the United States delegate, and of discussing matters with him. Mr. Conant is a well-known writer on banking, from whose "History of Modern Banks" I have already quoted a passage to you to-day. Before starting for Europe, he had discussed the questions likely to be raised with many banking and commercial authorities. We found that his views were fully in accord with ours, and throughout the conference we worked together in friendly cooperation. He clearly explained to us the American position. In the United States the Federal legislature has no jurisdiction over bills of exchange. Legislation with regard to them is purely a matter for the 45 State legislatures. The inconvenience of having more than 40 systems of law, more or less divergent, regulating instruments which pass freely from State to State was obvious. Accordingly, a model law was drawn up, which it was suggested that each State should enact for its own territory. The State of New York adopted this model law in 1897, and now it has been enacted by 35 States and 4 Territories, with occasional small local modifications. The result is that a uniform system of law has been attained throughout almost the whole of the union. Our American friends are naturally not anxious to have this uniformity disturbed. If any State adopts a rule culled from the continent, the uniformity which has cost so much to attain is broken up, unless and until the new rule is adopted by some 40 different legislatures.

I may remind you that the United States model law, though differently arranged from our act, is in substantial accord with it, and in very many instances is expressed in the same words.

The conference met on the 23d of June and sat until the 25th of July. The following nations took part in it—namely, Argentina, Austria, Belgium, Brazil, Bulgaria, Chile, China, Costa Rica, Denmark, France, Germany, Great Britain, Haiti, Hungary, Italy, Japan, Luxemburg, Mexico, Montenegro, Netherlands, Nicaragua, Norway, Paraguay, Portugal, Russia, Salvador, Servia, Siam, Spain, Sweden, Switzerland, Turkey, United States, and Uruguay.

The delegates included bankers and merchants, as well as lawyers, judges, and diplomatic representatives. Among other continental bankers we had M. Picard, secretary general of the Bank of France; M. Fischel, of the Berlin firm of Mendelssohn & Co.; and Dr. Hammerschlag, manager of the Imperial and Royal Credit Society of Vienna.

At the beginning of the conference the question was raised whether the conference should confine itself to laying down principles, leaving it to each nation to apply those principles to its own body of law, or whether it should frame a draft law for universal adoption. In other words, should the conference proceed by resolution or by draft



bill? We expressed an opinion in favor of the former course, but the other nations voted "en bloc" for the latter.

The conference, then in plenary session, discussed the 89 points raised by the Questionnaire. It was afterwards split up into five sections, each comprising seven nationalities, and of one of these sections Sir Mackenzie Chalmers was president. Each section proceeded to elect its own rapporteur. The points raised by the Questionnaire were considered seriatim and discussed by each of the sections, and new points were allowed to be raised. The opinions of the different nations were elicited and votes taken when necessary, and then the report of each section was presented to the central committee.

The central committee met as soon as the sectional reports were in print. It was composed of the five presidents of the sections, the five rapporteurs, five expert members—that is, bankers and merchants—and five other selected members. It was presided over by M. Asser. Taking as the basis of its discussions the reports of the five sections, the points of the Questionnaire were again gone through. When opinions differed, votes were taken and the resolutions of the committee were arrived at by simple majorities. The conclusions of the committee were then drawn up by the rapporteurs, Messrs. Lyon-Caen and Simons, in a series of articles accompanied by an explanatory memorandum.

The resolutions of the central committee, formulated as articles, were then brought before the conference in plenary session, and were passed in one sitting without amendment. The committee on private international law then presented their report, and submitted three draft articles, which were agreed to by the conference. The rapporteurs of the central committee and the rapporteurs of the committee on international law (Messrs. Renault and Kriege) were then instructed to incorporate the three articles on the conflict of laws into a preliminary draft of the uniform code, making at the same time any necessary drafting alterations.

The next day the combined work of the four rapporteurs was presented to the conference in the form of a draft convention and uniform law, and this draft (England and the United States standing aside) was adopted by the conference without division.

The rapporteurs of the central committee, Messrs. Lyon Caen and Simons, were men of exceptional ability and profound knowledge of their subject; but you will wonder how, within 48 hours of the conclusion of the work of the committee, which proceeded by votes and resolutions, they were able to present us with a complete cut and dried code. I think the explanation is this: Before the conference met, Germany, Hungary, and Belgium had each prepared a draft code of uniform law. None of these draft codes was formally discussed in the conference, but the votes and resolutions of the central committee were in substantial accord with the German draft. This, then, was taken as the basis of the uniform law. Where the resolutions of the committee departed from the proposals of the original draft, the draft was modified accordingly. You will find the draft law as prepared by the rapporteurs on page 48 of the Blue Book. In preparing the final draft included in the protocol, the combined rapporteurs took a somewhat liberal view of their functions as drafts-

men, and introduced some minor changes in the uniform law, which I do not think are improvements, and which certainly were not really discussed at the conference.

#### RESULTS OF THE CONFERENCE.

We can now sum up the results of the conference.

The draft uniform law applies only to bills of exchange and promissory notes payable to order. It has no application to promissory notes payable to bearer, or to cheques on a banker. It is proposed that the nations who accept the uniform law should adopt it by convention—that is to say, that it must be adopted in its entirety, without addition, derogation or alteration, except so far as certain points are by the law itself left open to national legislation. The contracting parties are as far as possible to adhere to the convention for their colonies, as well as for their own territories.

The draft uniform law is not yet in its final form. It is to be submitted for observations to each government which took part in the conference, and is to be finally settled in a second conference which, it is suggested, should be held at the Hague in September, 1911. At this conference the question of checks is also to be considered.

On the whole, the draft uniform law approaches the English law rather more nearly than any existing continental code. With qualifications, it allows bills to bearer. It does not require a bill or an indorsement to specify the value received. It gives full effect to indorsements in blank. It allows an acceptance by simple signature on the face of the bill. It allows a bill payable at or after sight to be made payable with interest. It adopts the English rule that when a bill is dishonored by non-acceptance, the holder has an immediate right of recourse against the drawer or indorsers. It recognizes, under limitations, the right of the drawer and indorsers of a dishonored bill to more or less prompt notice of dishonor. It gives some effect to vis major as excusing the performance of the holder's duties. But, quite apart from any questions of form, the divergencies between the uniform law and English law are numerous, and in some cases of far-reaching importance.

Before I touch on these points, there is a preliminary matter that I want to mention. As you are aware, the council of this institute, when considering the Bremen rules, drawn up by the international law association, strongly indorsed the proposal that a bill should never be rendered invalid by reason of its noncompliance with the stamp laws. This question came up at three stages of the conference, and on each occasion the conference was unanimous in declaring that stamp laws should only be enforced by pecuniary penalties, and not by invalidating the instrument. We, of course, stood aloof from the discussion, as we had no mandate to represent the British revenue authorities. The uniform law naturally does not deal with fiscal questions. The resolutions of the conference are therefore embodied in article 16 of the draft convention (Blue Book, p. 122), and every State which joins in the convention thereby undertakes to modify its stamp laws accordingly.

I do not know how far the inland revenue can be induced to reconsider their position so far as regards bills which only circulate

in England; but I hope they may see their way, at any rate, to alter the English law so far as regards persons who become parties to an English bill abroad.

Let me give you an illustration. Every bill (not payable on demand or at three days' sight or date) which is drawn in England must be drawn on an impressed stamp of the required amount. It can not be given in evidence unstamped, and it can not be stamped after issue. Suppose a bill is drawn in London on Berlin without the proper English stamp. It is negotiated in France and in Germany, and is finally dishonored in Berlin. The German holder can sue the French indorser, but neither of them can sue the English drawer, who was the party to blame. He gets off scot-free. Surely the foreign holder ought to be able to sue on the bill on paying a penalty, and ought then to be able to recover the penalty from the drawer. In the interests both of the revenue and of justice, I hope this change in our law will be made, and that we shall not have long to wait for it.

#### ATTITUDE OF THE BRITISH DELEGATES.

Now let us turn to the uniform law (Blue Book, p. 125) and consider how it will affect us, if the 31 nations, who assented to the draft, finally adopt it next September. The ideal of commerce is one and the same law, expressed in the same words, for all nations bound together by the bonds of international trade. Why, then, should we hold aloof? At the conference the British delegates were, of course, bound by their instructions. But I venture to think that those instructions were perfectly sound, and that our attitude at the next conference ought to be the same as it was at the last. The action of the British Government is justified by reasons both of form and of substance. I will briefly mention some of the more obvious reasons.

1. As I have already stated, the uniform law is to be brought into force, not by substantive legislation, but by convention. The convention must, of course, be ratified by legislation, but the law itself can not be discussed or modified. It must either be rejected or swallowed whole—like a pill. No branch of English law has ever been dealt with in this way. Do you think that Parliament would so far abrogate its functions as to pass, without effective discussion or amendment, a law made at a foreign conference where England's three delegates only had the same voting power as the one delegate of Haiti? It must be noted, too, that in case of doubt or difficulty the authorized version of the law is to be the French original deposited at The Hague.

2. The uniform law does not apply either to checks or to promissory notes payable to bearer. As regards those instruments we should have to enact new and distinct laws.

3. The scheme of the uniform law is to supersede all other laws directly regulating bills of exchange and promissory notes payable to order. Nearly one-half of our present bills of exchange act would have to be repealed, without any corresponding provisions being substituted therefor. Questions which have been laboriously settled by a long series of judicial decisions, and which are now embodied in the statute, would all have to be fought over again; and the provisions

of the new law, embodying new and unfamiliar rules, in unfamiliar language, would give ample scope for litigation. It would be a good time for the lawyers, but a bad time for the business community.

4. But there are even more substantial objections behind those I have mentioned. We have now got practical uniformity in the laws relating to bills of exchange throughout the English-speaking world. There are a few minor points of difference, but, apart from these, we have now got a uniform system in England and her colonies, India, and the United States. If we adopt the foreign code, we throw this great system out of gear, unless we can induce more than 50 Legislatures to follow our lead.

5. There is another point to bear in mind. If we became parties to the convention, we should have the same law (expressed in the same words) as all the other contracting States. But it does not follow that its operations would be the same. A code of bills of exchange law presupposes a general law of contract, and tribunals to enforce it. It is not, and can not be, self-sufficient. In England the new code would be embedded in the common law, which includes the law merchant. Its provisions would be enforced by the ordinary civil courts, who would be bound to construe it according to the well-known but technical rules which govern the construction of other acts of Parliament. On the Continent you have another system. A sharp distinction is drawn between the civil code and the commercial code—between traders and nontraders. The mercantile code is enforced not by the ordinary courts, but by special tribunals of commerce, whose decisions do not create binding precedents like those of our own courts, and who act rather as judicial arbitrators than as judges strictly so called.

Now let us consider the respective merits of the rules laid down by the uniform law and the Anglo-American system. In the memorandum appended to this paper you will find that my colleague and myself have called attention to 37 points of importance where the uniform law differs from our law, and if you compare the provisions of the uniform law with the provisions of the bills of exchange act, you will find many more minor points of difference—apart from the fact that many points settled by our act are not dealt with at all by the uniform law.

Speaking broadly, and subject to certain exceptions noted in the memorandum, I think that, where the two laws conflict, the English rule is the better one, and more in accord with the needs and conveniences of commerce. Our law is not an arbitrary law, imposed by the Legislature on the commercial community. The usages of bankers and merchants have been embodied in judicial decisions, and these judicial decisions have been embodied in the act. The Legislature in effect has merely ratified the usages of trade, and we should be careful how we depart from rules which time and custom have sanctioned.

Let me take a few examples. The uniform law draws no distinction between inland and foreign bills. If we adopted the convention, every dishonored bill and note would have to be protested, and in addition to the ordinary damages a commission of one-sixth per cent would be chargeable. I do not think this would be acceptable in England. Again, every holder of a bill is entitled to demand a set, and no limit to the number of parts he may demand is specified.

According to the letter of the law, the contankerous holder of a small bill, payable within a mile of the place where it is drawn, can go and demand a set of six from the drawer. Further, the holder of a bill can not refuse either a partial acceptance or a partial payment. To put extreme cases as a test, the holder of a bill for £1,000 can not refuse an acceptance for £10, while the holder of a bill for £500 must accept a payment of £499, and then protest the bill and go back on the foreign drawer or indorsers for £1. But the most radical departure from the principles of English law is contained in the provisions of the uniform law with regard to forgery. Under section 60 of the bills of exchange act, a banker is not bound to verify the indorsements, when a demand draft, drawn upon him, is presented for payment. All he has to do is to see that the indorsements appear to be in order. The uniform law extends this rule to all payments, whether by the drawee, by the acceptor, or by the acceptor's banker. There may be strong arguments in favor of this rule, but such a change could not be accepted without full deliberation and the considered assent of Parliament. But the uniform law does not draw the line at the obligations of the payor. If the indorsements on a bill appear to be in order, the holder of a bill who takes it in good faith gets a good title thereto, although one or more of the indorsements under which he claims are forgeries. He is only concerned with the form of the indorsements, and not with their genuineness. This, as you know, is already the law in Germany and those countries which have followed the German lead. It seems to me a highly dangerous principle, and one which this country would be very slow to adopt. In discussing it with our German colleagues we found that in some countries it was to a certain extent mitigated by the law of "Amortisation." Briefly, that law appears to be as follows: When a bill is lost or stolen the owner of it can apply to the court in the place where it is payable for an order restraining its payment. The court then publicly advertises the loss of the bill, and specifies a time within which any person claiming to be entitled to the bill can come forward and establish his claim. If no such claim is established, the court proceeds publicly to annul the bill, and give directions (if necessary) as to whom the money represented by the bill should be paid. But this procedure of course only meets cases where the loss is discovered in time to apply to the court before the bill is presented for payment.

I think I have now indicated sufficient reasons why England and the United States should have declined to join the convention. But I do not want you to think that we entered the conference with any feeling of hostility to its objects. We were anxious that it should be a success. If next year the 31 nations who have assented to the draft assent to the final code, a great step forward will have been made. Instead of 30 or 40 different systems of law, we shall have two only—the Anglo-American and the continental; and, doubtless, as time goes on these two systems will draw closer and closer together. Our only desire is that the continental system should be made as good as it can be, and we hope that some of the features of the draft law which we think are not in the interests of international commerce will be modified at the final conference next year. We feel sure that representations to this end, made by His Majesty's Government on behalf of the banking and mercantile community, will be carefully considered.



We learned a great deal at the conference. In the public discussions and in private discussions afterwards with some of our colleagues we had to consider the real merits and conveniences of the various conflicting rules, taking nothing for granted merely because we were accustomed to it. There is a well-worn saying: "*Fas est et ab hoste doceri.*" Much more than is it right and proper to learn from the experience of friendly nations, to whom we are bound by the ties of international commerce. We tried—and, I hope, succeeded—in keeping our minds open; and in the memorandum attached to this paper you will find English rules criticised as freely as continental rules.

#### AMENDMENTS OF THE BRITISH LAW RECOMMENDED.

If the uniform law is accepted and works well, there are several rules in it which we might eventually adopt for the sake of uniformity, especially if we find that the United States and our own colonies are inclined to fall in with them. But there are certain rules in the uniform law which are already adopted in many foreign countries and which Sir Mackenzie Chalmers and I think might usefully be incorporated in our law at once, without reference to the fate of the uniform law. They are as follows:

1. That days of grace should be abolished.
2. That when a bill falls due on a nonbusiness day, it should be payable on the next succeeding business day.
3. That when the sum payable by a bill is expressed more than once in words, or more than once in figures, and there is a discrepancy, the lesser sum shall be the sum payable.
4. That when a bill is expressed to be payable with interest, and no rate of interest is specified, interest at the rate of 5 per cent shall be understood.
5. That where the acceptance consists of the simple signature of the drawee, it must be on the face of the bill.
6. That where a bill is dishonored by nonacceptance, a party who is liable on the bill may nevertheless accept it for honor.
7. That payment for honor by the acceptor of a bill shall be prohibited.
8. That where the holder of a bill loses his right of recourse on the bill by reason of his failure duly to present or protest it, or to give notice of dishonor, he shall not thereby lose his right of action on the consideration, but that if the drawer or indorser whom he sues has been prejudiced by that failure, such drawer or indorser shall be discharged from his liability on the consideration to the extent of any loss he may have suffered.

You will find the reasons for these suggested amendments detailed in the memorandum affixed to this paper. Some of the proposed amendments deal with small points, but I should like to emphasize the reasons for Nos 1, 2, and 8, and to get you to consider them carefully.

As long ago as 1881 the Institute of Bankers recommended the abolition of days of grace, and the reasons in favor of this course are stronger now than they were then. Every Continental Nation has now got rid of them. They have been abolished in nearly all the States of the United States and in some of our own colonies. In

principle there is nothing to be said for them. Whatever they may have been in their origin, they are no longer days of grace, but are simply three days arbitrarily added by law to the nominal date of maturity of the bill. They are puzzling to foreigners and, as far as I know, useless to ourselves. If a bill is intended to be payable 33 days after sight, why not say so, instead of drawing it payable 30 days after sight?

The rule that when a bill falls due on a common-law dies non it is payable on the preceding business day, while if it falls due on a bank holiday it is payable on the succeeding business day is peculiar to the United Kingdom. Neither our colonies nor any other nations have adopted this complication. The complication is aggravated by the fact that the common-law and statutory holidays differ in England, Ireland, and Scotland. The rule that a bill which falls due on a Sunday is payable on a Saturday is doubly inconvenient, because it throws extra work on a short day, and also because it inflicts a hardship on the Jewish community, whose Sabbath is our Saturday.

The third point I wish to direct your attention to is the draconic rule of English law that when the holder of a bill negligently omits to perform any of his duties he usually loses not only his right of action on the bill against the drawer and indorsers, but also his right of action on the consideration which he gave for the bill. Under the uniform law, if the holder does not duly present and protest a bill, he loses his right of recourse on the bill, even though he was in no wise to blame. Neither accident nor illness is admitted as an excuse. When we pointed out the hardship of this rule, our foreign friends answered us by saying that the holder who had lost his right of recourse on the bill still had his "*action d'enrichissement*"—an action which appears to lie whenever one party gets any inequitable gain at the expense of another party. We could only reply that we had no such remedy in England. The eighth suggested amendment is designed to deal with this hardship.



## APPENDIX D. PAPERS OF THE FRENCH DELEGATION.

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### I. REPLY OF THE FRENCH DELEGATION TO THE QUESTIONNAIRE.

#### QUESTIONNAIRE.

1. La conférence doit-elle s'occuper exclusivement de la lettre de change et du billet à ordre, en réservant à l'examen d'une conférence ultérieure le droit concernant le chèque?

2. La loi uniforme doit-elle régler d'une manière complète tout le droit de la lettre de change (à l'exception de quelques matières qui, comme la forme des protêts, sont, par leur nature même, plutôt de la compétence de la loi nationale) ou doit-elle se borner à poser les principes en laissant à la loi nationale le soin de régler les détails?

#### RÉPONSES DU GOUVERNEMENT DE LA RÉPUBLIQUE.

Il semble difficile que l'on s'occupe de la lettre de change et du billet à ordre en laissant de côté le chèque, mais il va de soi que, pour ne pas prolonger les débats d'une première conférence, on pourrait, s'il y a lieu, réserver le chèque à une conférence ultérieure.

Le but qu'on doit se proposer en unifiant les législations ne sera vraiment atteint que si l'on ne se borne pas à s'entendre sur les principes. La loi uniforme doit entrer quelque peu dans les détails. Mais il ne faut pas dépasser à cet égard certaines limites; il y a des questions tellement spéciales que, sans inconvénient, la solution peut en être laissée aux lois nationales, telles sont les questions relatives aux formes du protêt et aux personnes compétentes pour le dresser.

A ce sujet le Gouvernement de la République a été amené à se demander quelle forme pourrait être donnée à la loi uniforme dont il s'agit. La Conférence élaborera-t-elle une loi que chaque Etat contractant s'engagera à promulguer sur son territoire; cette loi s'appliquera-t-elle à toutes les lettres de change ou seulement à celles tirées d'un pays contractant sur un autre ou bien la loi uniforme fera-t-elle l'objet d'une convention et par conséquent ne s'appliquera-t-elle qu'aux rapports entre les seuls Etats contractants?

Bien que le premier système paraisse présenter de réels avantages au point de vue de la simplification des législations sur la matière, constituant la véritable unification poursuivie, le Gouvernement de la République inclinera à penser que l'adoption du second système serait, pour des raisons d'ordre intérieur de nature à conduire à une solution pratique plus rapide.

Enfin, estimant que la convention projetée doit amener une simplification du droit sur la lettre de change, le Gouvernement de la République désire vivement

3. La loi uniforme doit-elle contenir aussi des règles complémentaires pour la solution des conflits de droit par rapport à la lettre de change?

que la loi puisse s'appliquer aux effets de commerce intérieurs comme aux autres, mais si, en raison de divergences de vues irréductibles, cette loi générale ne pouvait être adoptée, il verrait des avantages à l'établissement d'une législation internationale concernant les seules lettres de change tirées d'un pays sur un autre.

Si la loi internationale devient loi de chacun des Etats contractants, le règlement des conflits de droit sera utile vis à vis des pays non signataires de la convention.

Si la loi est constatée par une convention qui ne règle que les rapports entre les Etats contractants, mais si elle résout toutes les questions sans réserve, de telles dispositions seraient inutiles puisque la loi supprimerait les conflits.

Cette hypothèse ne semblant pas pouvoir être envisagée à l'heure actuelle, il y aurait intérêt à ce que la loi réglât les conflits les plus importants qui peuvent s'élever en raison des questions sur lesquelles la diversité des législations subsistera, notamment, sans doute, en ce qui concerne la capacité.

En ce qui concerne le règlement des conflits de lois, il paraîtrait utile de procéder comme pour les conflits de lois civiles, c'est-à-dire sous la forme d'une convention proprement dite.

#### A. DE LA LETTRE DE CHANGE.

##### I. CRÉATION. FORME.

4. La loi doit-elle exiger:

- (a) La dénomination de lettre de change?
- (b) L'indication de la valeur fournie?
- (c) Qu'il y ait remise de place en place?

Il conviendrait de réduire le plus possible les énonciations que doit contenir un titre pour constituer une lettre de change afin d'éviter des nullités fâcheuses. L'indication de la valeur fournie semble inutile, ainsi que celle de la remise de place en place.

L'exigence de la dénomination de lettre de change a l'avantage d'attirer l'attention des intéressés sur la valeur du titre, mais il est douteux qu'elle soit indispensable.

5. Doit-on permettre:

- (a) La création d'une lettre de change au porteur?
- (b) La création d'une lettre de change à l'ordre du tireur?
- (c) La création d'une lettre de change pour le compte d'autrui?
- (d) L'indication d'un besoin?  
et dans le cas d'une réponse affirmative à la question d,
- (e) Cette indication doit-elle avoir les mêmes effets qu'elle émane du tireur ou d'un endosseur?
- (f) La clause retour sans frais?
- (g) La clause sans garantie?
- (h) La clause qui exclut la faculté d'endossement (Rektawechsel)?

Oui.

Oui.

Oui.

Oui.

Oui.

Oui.

Oui.

Oui.



**6. Exemplaires. Copies.**

Quelles doivent être les dispositions de la loi par rapport:

(a) à l'obligation du tireur de fournir plus d'un exemplaire de la lettre de Change?

(b) à la forme et la rédaction des exemplaires?

(c) aux droits du porteur d'un exemplaire?

(d) aux copies?

7. La loi doit-elle régler la traite documentaire?

(connaissance, police, etc.).

Il ne semble pas nécessaire que la loi entre dans ces détails.

Il ne semble pas nécessaire que la loi entre dans ces détails.

**II. ENDOSSEMENT.**

8. Que doit-on prescrire par rapport à:

(a) la forme de l'endossement en général?

La loi doit-elle reconnaître plusieurs formes d'endossement avec des effets différents quant à

la transmission?

la garantie?

(b) l'endossement en blanc?

Il est désirable que les formes de l'endossement soient, comme celles de la lettre de change, aussi simples que possible.

La loi devrait laisser le juge libre d'apprécier, d'après toutes les circonstances, quelle est la nature de l'endossement, s'il y a contestation.

L'endossement en blanc est constaté par l'usage. Il y a lieu de l'admettre et de reconnaître expressément au porteur les divers droits qui lui appartiennent, dans certains pays, d'après la loi, dans d'autres, d'après la coutume (droit de transmettre le titre sans remplir le blanc, de la main à la main, droit pour l'endosseur de remplir le blanc de son nom ou de celui d'une autre personne).

Oui.

(c) l'endossement à titre de procuration?

(d) l'endossement postérieur à l'échéance?

Oui.

**III. PROVISION.**

9. La loi doit-elle contenir des dispositions relatives à l'obligation du tireur de faire provision et aux conséquences résultant de l'accomplissement de cette obligation?

Au cas où la loi uniforme réglerait cette question, le Gouvernement de la République ne pourrait, à ce sujet, consentir à ce qu'une solution différente de celle de la législation et de la jurisprudence françaises soit adoptée en ce qui concerne la transmission au porteur de la propriété de la provision.

**IV. ACCEPTATION.**

10. Le porteur doit-il, en principe, être libre de requérir ou de ne pas requérir l'acceptation?

Oui, et, en ne requérant pas l'acceptation, il ne doit pas encourir de déchéance.

Doit-on pouvoir stipuler dans la lettre de change

Soit que la présentation à l'acceptation est prohibée?

Soit que la présentation à l'acceptation est obligatoire?

Obligation du porteur de présenter la lettre de change au tiré

(a) Quand elle est payable dans un autre endroit que le domicile du tiré (indication de domicile)?

Oui, mais cette clause ne saurait être présumée.

Oui, et cette clause doit pouvoir être imposée par le tireur ou un des endosseurs.

Oui, et le tiré, en constatant que la traite lui a été présentée, indique le lieu du paiement.

(b) Quand elle est tirée à vue?

à un certain délai de vue?

11. Quelles doivent être les dispositions de la loi à l'égard de:

(a) la forme de l'acceptation (acceptation par acte séparé)?

(b) son caractère et ses effets?

(c) le tiré doit-il avoir le droit de biffer son acceptation tant qu'il n'est pas dessaisi de la lettre de change ou n'a pas donné connaissance de son acceptation au porteur?

12. Refus d'acceptation et ses conséquences.

(a) Dans quels cas y a-t-il refus d'acceptation?

(b) Contre qui le porteur peut-il exercer le recours?

(c) Ceux contre qui le recours est exercé doivent-ils avoir le choix entre la caution et le remboursement?

Ou bien le porteur doit-il avoir le droit de demander le remboursement?

13. La loi doit-elle accorder des droits spéciaux au porteur d'une lettre de change en cas de faillite de l'accepteur?

Ou du tiré?

14. Acceptation par intervention.  
Quand peut-elle être faite?

Par qui?

Dans quelle forme?

Avec quels effets?

#### V. AVAL.

15. (a) La loi doit-elle reconnaître l'aval?

(b) En ce cas, que doit-elle prescrire quant à

la forme?

l'effet de l'aval?

La présentation vaut mise en demeure de paiement.

Oui, et la date de la présentation fera courir le délai de vue.

L'acceptation doit être signée, dans certains cas datée (V. Question 10) et constatée sur le titre lui-même.

L'acceptation est un contrat unilatéral qui se forme entre le tiré et le porteur et à partir du moment où le tiré a fait connaître son acceptation il devient le débiteur principal du montant de l'effet.

Oui. Le tiré doit pouvoir conserver pendant un certain délai la lettre de change qui lui a été présentée et, pendant ce délai, il doit avoir le droit de biffer son acceptation. Il n'a plus ce droit lorsqu'il a donné avis de son acceptation.

Le tiré non commerçant peut être admis à refuser son acceptation lorsqu'il n'a pas autorisé le tireur à émettre la traite.

Il y a refus d'acceptation lorsque le tiré refuse d'accepter la lettre de change telle quelle. Des restrictions peuvent toutefois être faites en ce qui concerne le montant de l'effet.

Contre le tireur et les endosseurs.

Oui.

Non.

En cas de faillite de l'accepteur le porteur doit pouvoir faire protester et exercer son recours comme au cas de refus d'acceptation.

Non, sauf le recours pour défaut d'acceptation.

Lors du protêt pour faute d'acceptation, la lettre de change doit pouvoir être acceptée par un tiers intervenant pour le tireur ou l'un des endosseurs.

Par une personne quelconque capable de s'obliger par lettre de change pourvu qu'elle ne soit pas déjà tenue en vertu de la lettre.

L'intervention est mentionnée dans l'acte de protêt et signée de l'intervenant.

L'accepteur par intervention a les mêmes droits et obligations que la personne pour laquelle il est intervenu. Le porteur, nonobstant intervention conserve tous ses droits envers le tireur et les endosseurs.

Oui, pourvu que le donneur d'aval ne soit pas déjà obligé par la lettre de change.

L'aval peut être donné sur la lettre même ou par acte séparé.

Le donneur d'aval doit être tenu solidairement et par les mêmes voies que les tireurs et endosseurs, sauf les conventions différentes des parties.

## VI. ÉCHÉANCE.

16. (a) Quelles doivent être les dispositions de la loi par rapport à l'exigibilité des lettres de change payables.

à jour fixe?  
(en foire)?

à un certain délai de date (usances)?

à vue?

à un certain délai de vue?

Si l'échéance d'une lettre de change est à un jour férié légal dans le pays où elle doit être payée, elle est payable le 1<sup>er</sup> jour ouvrable qui suit.

La lettre est échue à ce jour fixé.

D'après le code de commerce français (art. 133) la lettre payable en foire est échue la veille du jour fixé pour la clôture de la foire ou le jour de la foire si elle ne dure qu'un jour. Mais les lettres payables en foire ne sont plus usitées en France.

Les lettres de change à un certain délai de date sont exigibles à l'expiration du délai fixé; ce délai court de la date de la lettre de change.

D'après le code de commerce français (l'art. 132), les usances sont de trente jours. Mais on ne se réfère plus aux usances, et une loi uniforme pourra les laisser de côté sans inconvénients.

La lettre de change à vue est payable à présentation.

Ce délai court de la date de l'acceptation ou du protêt faute d'acceptation. Il serait bon d'admettre que le délai de vue peut courir aussi du jour où le tiré, sans accepter, a donné son visa sur la lettre de change. Il est douteux que cette dernière solution soit admise par le code de commerce français; l'article 130 de ce code y paraît contraire.

## VII. PAIEMENT.

17. (a) Quand le paiement doit-il être demandé?

et effectué?

(b) Le porteur peut-il être contraint à recevoir le paiement avant l'échéance?

(c) Quelles règles doivent être posées par la loi à l'égard de la validité du paiement.

avant l'échéance?

à l'échéance?

(d) Doit-on admettre qu'à moins d'une stipulation contraire dans la lettre de change, le paiement doit se faire en monnaie ou en billets ayant cours légal au lieu du paiement.

La loi doit-elle statuer à quel cours (à défaut d'une stipulation spéciale dans la lettre de change) la valeur de la lettre de change sera calculée si elle contient l'indication du montant dans une autre monnaie que celle du lieu de paiement.

(e) La loi doit-elle s'occuper du paiement partiel de la lettre de change, soit en le permettant, soit en le défendant?

Le jour de l'échéance.

Le jour de l'échéance.

Non, sauf 1<sup>o</sup>. convention contraire;

2<sup>o</sup>. refus d'acceptation du tiré;

3<sup>o</sup>. faillite de l'accepteur ou faillite du tireur à défaut d'acceptation.

Le payeur doit être responsable de la validité du paiement.

Le payeur doit être présumé valablement libéré.

Oui.

Oui. Le cours du jour de l'échéance à défaut de stipulation contraire.

La loi peut le permettre à condition que les paiements faits à compte d'une lettre de change soient à la décharge du tireur et des endosseurs et que le porteur soit tenu de faire protester la lettre de change pour le surplus.

## VIII. PAIEMENT PAR INTERVENTION.

18. (a) Par qui et pour qui le paiement par intervention peut-il être fait?

(b) Forme du paiement par intervention.

(c) Effets du paiement par intervention.

Partout intervenant pour le tireur ou pour l'un des endosseurs.

L'intervention et le paiement seront constatés dans l'acte de protêt ou à la suite de l'acte.

Celui qui paie une lettre de change par intervention est subrogé aux droits du porteur et tenu des mêmes devoirs pour les formalités à remplir.

Si le paiement par intervention est fait pour le compte du tireur, tous les endosseurs sont libérés.

S'il est fait pour leur endosseur, les endosseurs subséquents sont libérés.

## IX. RECOURS DU PORTEUR.

19. (a) Quelles formalités doivent être remplies par le porteur comme condition du droit de recours?

(b) Le défaut de paiement doit-il être notifié aux obligés (endosseurs, tireurs) et dans quel délai?

20. Quel est l'objet du recours?

21. Le porteur qui veut exercer son recours est-il obligé d'observer l'ordre dans lequel les divers obligés solidaires ont signé la lettre de change, en commençant par le dernier endosseur?

22. Quelles sont les règles à poser par rapport aux déchéances

(a) Vis à vis du tireur?

(b) Vis à vis des endosseurs?

Réclamer le paiement à l'échéance.

Faire dresser, s'il y a lieu, en temps utile le protêt faute de paiement et recourir contre les obligés dans les délais impartis.

Oui, et la loi devra déterminer si cette notification doit nécessairement être effectuée par voie de contrainte ou par simple lettre. Cette seconde procédure peut être recommandée comme plus économique. La loi déterminera les délais impartis pour opérer cette notification.

Exercer l'action en garantie du porteur contre les divers obligés pour le paiement du montant de la traite des intérêts du jour du protêt et des frais.

Le porteur peut exercer son action en garantie ou individuellement contre le tireur et chacun des endosseurs—ou collectivement contre les endosseurs et le tireur.

Le porteur négligent est déchu de ses droits vis à vis du tireur si celui-ci justifie qu'il y avait provision au moment de l'échéance.

Le porteur négligent est déchu de tous ses droits vis à vis des endosseurs à moins que ce soit par son fait que le porteur a encouru la déchéance.

## X. PERTE DE LA LETTRE DE CHANGE.

23. Suffit-il que la loi contienne des dispositions à l'effet d'accorder à celui qui perd une lettre de change (acceptée ou non acceptée) le droit

soit de réclamer le paiement, en donnant caution,

soit de réclamer un autre exemplaire?  
ou bien

24. Doit-on introduire la procédure d'amortissement (Amortisations-Verfahren)?

25. Quelle doit être, dans chacun de ces cas, la situation du porteur de la lettre de change qui justifie de sa propriété par une série d'endossements descendant jusqu'à lui?

Le système de l'Amortisations-Verfahren semble ingénieux et simple, mais le Gouvernement de la République ne possède pas de renseignements suffisamment précis sur les résultats de son application pour pouvoir, à l'heure actuelle, se prononcer à cet égard.

**XI. VICES DE FORME. SUPPOSITION.**

26. Quelles dispositions la loi doit-elle contenir par rapport aux omissions et autres vices de forme?

27. Y a-t-il lieu de régler l'effet de suppositions, même si la condition de la "remise de place en place" est supprimée?

**XII. FAUX.**

28. Quels doivent être les effets du faux quand il s'agit

(a) de la signature du tireur, d'un endosseur ou de l'accepteur?

(b) de l'altération matérielle du contenu de la lettre de change?

**XIII. PROTÊTS.**

29. La loi doit-elle régler la forme des protêts y compris

le jour (force majeure) } où ils doivent  
le lieu } être dressés,

et, en ce cas, doit-elle admettre ou non les protêts par l'intermédiaire de la poste?

**XIV. PRESCRIPTION.**

30. Quel doit être le délai de prescription des actions

(a) contre l'accepteur?

(b) contre le tireur et les accepteurs?

31. Quel doit être le point de départ de ces délais?

32. Doit-on accorder à celui à qui la prescription est opposée la faculté de déférer aux prétendus débiteurs le serment qu'ils ne doivent plus la somme réclamée?

**B. DU BILLET A ORDRE.**

33. En quoi la forme à prescrire pour les billets à ordre doit-elle être différente de celle qui est prescrite pour les lettres de change?

Il faut prévoir les vices de forme pour en indiquer les conséquences. Elles devront consister, en principe, en ce que le titre, n'étant pas une lettre de change, ne reçoit pas l'application des règles spéciales à cet effet de commerce.

Mais, si la remise de place en place est mise de côté, il est inutile de prévoir des suppositions s'appliquant à d'autres objets que le lieu de création de la lettre de change.

Il y aura lieu d'examiner si, reconnaissant que les différents actes qui se rattachent à la lettre de change sont distincts et indépendants, il faut admettre que la falsification d'une signature, par exemple celle du tireur, ne met pas obstacle à ce que les autres signataires du titre soient obligés.

La loi peut laisser aux législations nationales la réglementation des formes des protêts.

Elle peut aussi s'en remettre à elles de la solution à donner à la question de savoir si les protêts peuvent être faits par l'intermédiaire de la poste. Il convient de reconnaître l'existence de la force majeure en cette matière.

Il serait nécessaire que la loi:

(a) fixât le délai dans lequel le protêt doit être fait;

(b) décidât si une déclaration du tiré sur la lettre de change peut remplacer le protêt.

Toutefois le Gouvernement de la République serait hostile à toute prolongation du délai fixé par la loi française pour la confection du protêt qui doit être fait le lendemain même de l'échéance.

Ces questions pourraient être examinées par la conférence.

Le billet à ordre doit être daté et énoncer la somme à payer, le nom de celui à l'ordre de qui il est souscrit, l'époque à laquelle le paiement doit s'effectuer.



34. Quelles sont les dispositions relatives aux lettres de change qui doivent être également applicables aux billets à ordre?

En général toutes les dispositions relatives à la lettre de change, sauf celles qui, en raison de la forme même de cet effet ne sont pas applicables, devront régir le billet à ordre.

La loi uniforme n'aura pas à s'occuper du point de savoir si les signataires du billet à ordre s'obligent commercialement comme ceux de la lettre de change.

### C. DROIT INTERNATIONAL PRIVÉ.

36. Quelles sont les règles de droit international privé applicables:

(a) à la capacité des signataires d'une lettre de change ou d'un billet à ordre?

Il y a lieu d'admettre que la loi nationale régit la capacité des signataires de la lettre de change ou du billet à ordre. Mais on devrait reconnaître, en même temps, dans l'intérêt du crédit, qu'un titre est valablement signé dans un pays par un étranger capable de s'obliger d'après la loi de ce pays et incapable d'après sa loi nationale.

(b) à la forme des obligations contractées par la signature d'une lettre de change ou d'un billet à ordre?

D'après la règle *locus regit actum*, il doit être admis, en principe, que les conditions de forme sont déterminées par la loi du pays où le titre a été souscrit.

Mais si, en fait, les formes exigées par la loi d'un pays ont été observées dans un autre pays, la validité de l'acte devra être reconnue dans le premier, alors même que la forme exigée dans le pays où l'effet a été souscrit, n'aurait pas été suivie.

(c) aux formalités à remplir par rapport à une lettre de change ou un billet à ordre pour conserver les droits qui en résultent?

Chaque signataire de la lettre de change ou du billet à ordre est tenu d'obligations que détermine la loi du pays où il s'est obligé. C'est à cette même loi qu'on doit se référer pour la conservation des droits existant contre chaque signataire du titre.

(d) à la sanction des prescriptions fiscales?

Les lois des divers pays soumettent à un droit de timbre les lettres de change et les billets à ordre. Des sanctions diverses assurent l'observation de ces lois fiscales.

Ces sanctions consistent, selon les pays, dans des amendes ou dans la nullité du titre non timbré ou revêtu d'un timbre insuffisant. Il n'est pas douteux que l'amende édictée par la loi d'un pays pour inobservation de la loi fiscale ne peut être prononcée par les tribunaux d'un autre pays. Mais doit-on décider qu'une lettre de change, étant déclarée par la loi du pays où elle a été créée, nulle pour défaut de timbre, doit être annulée pour ce fait dans un autre pays?

En raison du caractère territorial des lois fiscales, le Gouvernement de la République répondra à cette question par la négative.

## II.—REPORT OF THE FRENCH DELEGATION.

[Rapport fait aux Ministres des Affaires Étrangères et du Commerce et de l'Industrie par la Délégation française à la Conférence internationale de la Haye pour l'unification du droit relatif à la lettre de change et au billet à ordre.]

PARIS, *le 15 Octobre 1910.*

MONSIEUR LE MINISTRE:

Vous avez bien voulu nous désigner comme Délégués du Gouvernement français à la Conférence internationale de La Haye pour l'unification du droit relatif à la lettre de change et au billet à ordre. Nous avons l'honneur de vous rendre compte des résultats de ses travaux.

Les divergences nombreuses qui existent entre les lois commerciales des divers pays ont le grave inconvénient d'entraver le développement des relations internationales. D'abord, il est difficile aux commerçants de connaître les lois des pays auxquels ils n'appartiennent pas et qui leur sont souvent applicables quand ils contractent avec des personnes appartenant à d'autres nationalités ou quand ils font des opérations en dehors de leur propre pays. Puis ces divergences donnent lieu à des conflits de lois en présence desquels il est parfois malaisé de déterminer quel est le pays dont on doit appliquer la loi. De là naissent des incertitudes et parfois des procès qui sont une cause de frais et de perte de temps.

Aussi depuis longtemps a-t-on émis le vœu qu'il fût fait un code de commerce unique pour tous les États; c'est ce qu'on a souvent appelé un code de commerce international. Mais on a généralement fini par reconnaître qu'une entente entre les États sur toutes les matières commerciales est d'une réalisation impossible. Du reste, il est des matières commerciales sur lesquelles une telle entente ne serait pas d'une réelle utilité; ce sont celles qui, au point de vue des rapports internationaux, n'ont qu'une importance restreinte.

Si l'unification complète du droit commercial ne paraît pas réalisable, il est, du moins, possible d'y parvenir sur quelques matières. L'une de celles où cette unification rendrait les plus grands services est assurément la matière de la lettre de change et du billet à ordre.

La lettre de change a une utilité considérable dans les rapports internationaux. Elle évite les transports de numéraire, elle permet d'échapper à quelques-uns des inconvénients de la diversité des monnaies, elle sert au règlement de toutes les dettes internationales entre les États et entre les particuliers.

Fréquemment, une lettre de change créée dans un pays est payable dans un autre et, entre le jour de son émission et le jour de son échéance, une lettre de change est souvent l'objet d'endossements successifs faits dans les pays les plus divers. Quand les lois des pays de l'émission, du paiement, des endossements sont divergentes, les intéressés sont difficilement au courant de ces lois et des difficultés s'élèvent sur le point de savoir quelle est la loi à appliquer.

Ce qui est vrai de la lettre de change l'est aussi du billet à ordre. Seulement, ce dernier effet de commerce est beaucoup moins employé que la lettre de change dans les relations internationales.

L'idée d'unifier les lois sur la lettre de change a été émise dès le XVIII<sup>e</sup> siècle. Mais c'est surtout de nos jours, dans la seconde moitié du XIX<sup>e</sup> et depuis le commencement du XX<sup>e</sup>, qu'un mouvement marqué s'est produit, en faveur de cette idée, dans un grand nombre de pays, et spécialement en France.

Ce ne sont pas seulement des personnes isolées, commerçants ou jurisconsultes, qui ont prôné les avantages d'une législation uniforme en matière de lettre de change. Des associations de commerçants et de jurisconsultes, des congrès ont émis des vœux répétés sur ce point, des parlements ont invité leurs gouvernements à s'occuper de la réalisation de ces vœux et des projets ont été préparés.

Dès le milieu du XVIII<sup>e</sup> siècle, l'unification des lois relatives à la lettre de change fut recommandée par Accarias de Sérionne. Mais cette idée paraît avoir été oubliée pendant de longues années; c'est seulement depuis un demi-siècle environ qu'elle a donné lieu à des manifestations favorables répétées et variées. Il importe de mentionner les principales; il en résulte avec évidence qu'il y a là un but poursuivi depuis longtemps avec une remarquable persévérance.

En 1863, l'Association anglaise pour les progrès de la science sociale (National association for the Promotion of Social Science), dans sa session de Gand, accueillit favorablement une proposition de M. Asser, avocat, professeur de droit à Amsterdam<sup>1</sup>, tendant à ce que les jurisconsultes des principaux pays commerçants s'entendent pour rédiger une loi uniforme sur la lettre de change.

En 1869, la Société de législation comparée de Paris, qui venait de se fonder, mit la question à l'ordre du jour en constituant une commission pour l'étude critique comparative des lois sur cette matière.

Les difficultés que suscitèrent les lois françaises de 1870 et de 1871, relatives à la prorogation des délais des protêts ou des échéances et les décisions divergentes rendues par les tribunaux des divers pays, attirèrent spécialement l'attention sur les inconvénients de la diversité des lois. De 1872 à 1875, des congrès de jurisconsultes réunis en Hongrie, en Danemark, en Allemagne, proclamèrent que l'unification des lois relatives à la lettre de change est un besoin de commerce international.

On ne tardera pas à se mettre à l'œuvre en cherchant à donner satisfaction à ces vœux répétés.

L'Association pour la réforme et la codification du droit des gens (qui est devenue l'International law association), dans des réunions tenues, de 1876 à 1878, à Brème, à Anvers et à Francfort-sur-le-Mein, sur le rapport d'une commission composée de représentants de douze États, vota 27 règles (connues sous le nom de règles de Brème) qui indiquent les solutions à adopter sur les principales questions dans une loi uniforme relative à la lettre de change.

Il s'agissait là seulement des bases générales d'un projet de loi. Un projet de loi complet fut rédigé par les soins de M. Cesare Norsa, avocat à Milan. Ce projet comprenant 106 articles fut discuté et adopté par l'Institut de Droit international, dans sa session tenue à Bruxelles en 1885 et recommandé à l'attention des gouvernements.

En 1884, le Roi des Belges constitua une commission chargée d'organiser un Congrès de Droit commercial qui se réunit à Anvers

<sup>1</sup> Actuellement Conseiller d'État et Ministre d'État à La Haye. C'est lui qui a présidé la Conférence de La Haye dont les travaux font l'objet du présent rapport.

en 1885. Il vota un projet de loi sur la lettre de change, sur le billet à ordre et même sur le chèque, en 57 articles à recommander à l'adoption des différents États. Le Congrès d'Anvers comprenait des délégués officiels de quinze gouvernements, spécialement du Gouvernement français, et des représentants de banques, de chambres de commerce, de bourses, de facultés de droit et d'associations juridiques d'un grand nombre de pays. Ce projet fut complété et révisé en 1888, dans un second Congrès tenu à Bruxelles.

Le Congrès international du Commerce et de l'Industrie, qui se tint, en 1889, à Paris, à l'occasion de l'Exposition universelle, s'occupa du même sujet. Sur le rapport de MM. Lyon-Caen et Cousté, il adopta dix-huit règles formulant les bases d'une loi uniforme sur les lettres de change. En outre, une adresse au Gouvernement belge fut votée pour le remercier de la grande et utile initiative qu'il avait prise dans les Congrès d'Anvers et de Bruxelles.

En 1900, la question fut traitée à Paris dans les séances du Congrès international de Droit comparé, organisé par la Société de législation comparée. En 1904, elle fut reprise par l'association des jurisconsultes suisses réunie à La Chaux-de-Fonds.

A partir de 1905, le mouvement s'accroît, les vœux et les résolutions favorables à l'unification des lois se multiplient. Il ne se passe plus une seule année sans que quelque fait se produise à cet égard.

Au Congrès international des chambres de commerce et des associations commerciales et industrielles, tenu à Liège en 1905, un délégué de la chambre de commerce de Vérone présenta un rapport concluant à la nécessité de la convocation d'une conférence pour la préparation d'une loi uniforme sur la lettre de change. Mais la décision à prendre fut remise au Congrès de Milan, qui se réunit en 1906. Celui-ci vota une résolution invitant les membres du Congrès à faire, auprès de leurs gouvernements respectifs, des démarches pour les déterminer à entamer des négociations tendant à la confection d'une loi uniforme sur la lettre de change.

Quelques jours après, le 5 octobre 1906, l'International law association, réunie en session à Berlin, vota une résolution par laquelle elle exprimait sa sympathie pour le projet d'unification du Droit relatif à la lettre de change, sur lequel elle avait déjà antérieurement porté son attention, et elle chargeait son comité exécutif de faire toutes démarches utiles pour assurer le succès.

La même association, réunie en 1908 à Budapest, révisa les règles de Brème adoptées de 1876 à 1878, et en fit les vingt-six règles de Budapest.

En 1907 (1<sup>er</sup> mai), le Reichstag allemand vota à l'unanimité une résolution favorable à l'unification du droit en matière de lettre de change et à la convocation d'une conférence internationale chargée de la réaliser.

Le mouvement s'étendit à l'Italie. Le 15 mai 1908, la chambre des députés italienne adopta une résolution semblable à celle qu'avait votée, l'année précédente, le Parlement allemand.

Le 4 septembre 1908, le Congrès international des chambres de Commerce, réuni à Prague, se prononça aussi en faveur de l'unification des lois sur la lettre de change et de la convocation d'une conférence internationale.

L'Union interparlementaire réunie à Berlin proclama le 19 septembre 1908, à l'unanimité, la nécessité d'une loi uniforme sur la lettre de change.

La Fédération des Industriels et des Commerçants français s'associa, en 1908, à ces résolutions.<sup>1</sup>

A la suite de ces vœux, de ces résolutions, de ces projets, les gouvernements italien et allemand s'entendirent pour demander au gouvernement néerlandais de convoquer à La Haye une conférence internationale qui aurait à s'occuper de l'unification réclamée si vivement et si souvent dans tant de pays divers.

Une invitation fut adressée par le Gouvernement néerlandais à tous les États qui ont participé à la dernière conférence de la paix. Cette invitation fut suivie d'un Questionnaire indiquant toutes les questions que la conférence internationale aurait à résoudre pour parvenir à arrêter les termes d'une loi uniforme.

Un grand nombre de gouvernements ont fait des réponses à ce Questionnaire. Il en a été ainsi du Gouvernement français.<sup>2</sup>

Le Questionnaire du Gouvernement des Pays-Bas a été soumis au Comité de législation commerciale du ministère du commerce et de l'Industrie. Celui-ci a organisé une enquête dans laquelle il a entendu des représentants de la Banque de France, des grands établissements de crédit et de deux importants syndicats professionnels de banquiers: l'Union des Banquiers de Paris et de la province et l'Union des Banquiers des départements. Un rapport a été adressé au ministre du commerce et de l'industrie pour expliquer les principales réponses au Questionnaire proposées par le comité de législation commerciale. Ce rapport, communiqué au ministre des affaires étrangères, a été examiné par la commission de droit international privé qui s'est ralliée à ses conclusions. Celles-ci, approuvées par les deux ministres compétents, ont servi d'instruction aux délégués français. Ainsi, les questions posées ont été mûrement examinées en France et, grâce à l'enquête à laquelle il a été procédé, il a été tenu largement compte, dans les réponses faites aux questions posées, des idées des intéressés fondées sur l'expérience et sur les besoins de la pratique.

La conférence internationale convoquée à La Haye s'est réunie dans cette ville le 23 juin 1910 et ses travaux ont duré jusqu'au 25 juillet suivant. Trente-deux États y étaient représentés. Les Délégués étaient à la fois des jurisconsultes et des hommes versés dans la pratique des opérations de banque, spécialement des représentants des banques nationales ou d'importantes banques privées (Banque de France, Banque nationale de Belgique, Banque nationale Suisse, Banque d'Angleterre, Maison Mendelssohn et C<sup>ie</sup> de Berlin, Banque privilégiée Impériale et Royale de crédit pour le commerce et l'industrie de Vienne, Centralbanken for Norge de Christiania, etc.).

La conférence a arrêté les termes d'un avant-projet de loi uniforme qui comprend 88 articles. En même temps, elle a rédigé un avant-projet de convention internationale à laquelle l'avant-projet de loi est annexé (art. 1<sup>er</sup>).

<sup>1</sup> Bulletin mensuel de la Fédération des Industriels et des Commerçants français, n° 63, 6<sup>e</sup> année, n° 2, 1908.

<sup>2</sup> Depuis longtemps on réclame de différents côtés, en France, une révision de la législation sur la lettre de change et sur le billet à ordre. Lors de la discussion au Sénat de la loi du 7 juin 1894, qui a supprimé la nécessité de la remise de place en place dans la lettre de change, le Ministre de la Justice, M. Fallières, promit de déposer un projet de loi faisant une révision générale de la législation sur les lettres de change et les billets à ordre.



La convention contient l'engagement par les États contractants de mettre en vigueur dans leurs pays respectifs le projet de loi. Elle renferme, en outre, quelques dispositions ayant pour but de réserver aux lois nationales la faculté de résoudre autrement que la loi uniforme quelques questions sur lesquelles il n'était pas possible d'arriver à un complet accord ou de statuer sur des questions que la loi uniforme ne tranche point.

La loi uniforme est, d'après l'idée qui a été admise par la conférence, destinée à devenir la loi même de chacun des pays contractants et à se substituer, par suite, complètement à la loi en vigueur. Elle ne sera donc pas applicable seulement dans les rapports internationaux, elle le sera sur le territoire de chacun des États contractants même dans les relations entre les nationaux de chacun d'eux. On arriverait à des complications parfois très grandes si à côté des lois nationales demeurant en vigueur dans chaque pays, il y avait un droit spécial consacré par la convention pour les seules relations internationales.

La conférence a estimé, par suite, que la loi uniforme ne doit pas être restreinte aux seules lettres de change internationales. On peut entendre sous ce nom les lettres de change payables dans un pays autre que celui de leur création. Avec ce système, on laisserait subsister les lois nationales de chaque pays pour les lettres de change payables dans le pays même de leur émission.

On a fait remarquer que ces dernières lettres de change peuvent être endossées dans d'autres pays que celui où elles ont été émises et sont payables et qu'alors, la loi uniforme se trouvant sans application, les conflits de lois qu'on se propose d'éviter par l'unification du droit, continueraient à se produire.

La conférence a reconnu que l'accord entre les États est possible sur presque tous les points. Il a, toutefois, été constaté que, sur quelques-uns, il ne serait pas possible d'avoir raison de dissentiments tenant à des conceptions théoriques différentes ou provenant de besoins et d'usages pratiques variant suivant les pays.

Ces quelques dissentiments irréductibles ne touchant pas à des points vraiment essentiels, ne peuvent mettre obstacle à l'entente générale. Sur les questions sur lesquelles on ne peut espérer que l'accord se fasse, il a été réservé aux lois nationales de statuer librement, en dérogeant à la loi uniforme ou en comblant les lacunes qu'on y a laissées. Les réserves faites au profit des lois nationales sont insérées dans la convention.

Quelques-unes de ces réserves ont, pour la France, une réelle importance. Sur plusieurs points, les intéressés entendus dans l'enquête faite par le comité de législation commerciale ont indiqué qu'à aucun prix les avantages de l'unification ne devaient faire abandonner certaines règles admises par la loi française. Il a été donné satisfaction à ce désir par l'insertion d'une réserve au profit des lois nationales toutes les fois que les idées françaises dont il s'agit n'ont pu être consacrées par la loi uniforme.

Trois réserves de cette nature méritent d'être signalées pour bien faire comprendre que nous n'aurons à sacrifier aucun des principes auxquels les intéressés tiennent essentiellement, en adhérant à la convention projetée.

A. Les législations ne concordent pas dans leurs dispositions relatives à la forme de la lettre de change. Elles diffèrent notamment au point de vue suivant. Quelquesunes (lois allemande,

autrichienne, hongroise, italienne, scandinave, japonaise, etc.) exigent, pour qu'un titre vaille légalement comme lettre de change que la dénomination de "lettre de change" dans la langue du pays dans laquelle le titre est rédigé, figure dans le contexte. En faveur de cette exigence, on fait valoir qu'il est utile que la dénomination insérée dans le titre en indique bien la nature à toutes les personnes qui y apposent leurs signatures ou entre les mains desquelles elles passent à raison des règles spéciales et souvent assez rigoureuses qui régissent les lettres de change. La loi uniforme admet la règle dont il s'agit. Mais en France, il semble que généralement les intéressés sont hostiles à une règle formaliste qui y est inconnue jusqu'ici et qui a l'inconvénient de créer une cause de nullité. L'avant-projet de convention (art. 2) réserve à chaque État contractant la faculté de prescrire que les lettres de change créées sur son territoire, qui ne contiennent pas la dénomination de lettre de change, sont valables. Le législateur français pourra user de cette faculté.

Mais on a pensé que, dans les pays où la nécessité de la dénomination de lettre de change sera écartée, il faudra qu'une mention y supplée. Ce sera la clause à ordre. La convention laisse à chaque État contractant la faculté de se borner à exiger cette clause. Sur ce point aucun changement ne sera apporté à notre législation, s'il est usé en France de cette faculté; le code de commerce français (art. 110) exige déjà la clause à ordre dans la lettre de change.

B. Les lois en vigueur diffèrent profondément au point de vue de provision. D'après le code de commerce français (art. 115 et 116), le tireur est tenu de l'obligation de faire provision à l'échéance. Une jurisprudence constante admet que la créance du tireur contre le tiré qui constitue la provision, se transmet de plein droit avec la lettre de change à chacun des porteurs successifs. Ainsi, le porteur a sur cette créance un droit exclusif. Deux avantages résultent de cette théorie de la transmission de la propriété de la provision pour le dernier porteur. Grâce à elle, d'abord, il a une action contre le tiré même à défaut d'acceptation. Puis, en cas de faillite ou de liquidation judiciaire du tireur, le porteur n'a pas à craindre que le syndic ou le liquidateur retire la provision; il se fait payer intégralement par le tiré. Quelques lois étrangères en petit nombre, notamment la loi belge du 20 mai 1872 (art. 4 à 6), consacrent les mêmes solutions.

Mais, dans un grand nombre de pays, au contraire, la loi ne s'occupe pas de la provision, elle n'impose pas au tireur l'obligation de faire provision à l'échéance et le porteur, quand le tireur est créancier du tiré, n'acquiert sur la créance dont il s'agit aucun droit exclusif. Dans ces pays, le porteur n'a pas d'action contre le tiré non accepteur et, en cas de faillite du tireur, le porteur non payé par le tiré en est réduit à se présenter comme créancier dans cette faillite et est soumis comme tel à la loi du dividende. On estime dans les pays qui admettent ce système que la lettre de change est un titre qui doit se suffire à lui-même et que la loi sur la matière n'a pas à s'occuper des opérations diverses auxquelles la lettre de change peut, en fait, se rattacher. C'est là le système admis notamment en Allemagne, en Autriche, en Hongrie, en Italie, dans les pays scandinaves.

L'avant-projet de loi uniforme est muet sur la provision. Mais la convention (art. 12, 2<sup>e</sup> alinéa) laisse aux États la liberté d'admettre, en ce qui le concerne, l'un ou l'autre des systèmes qui se partagent les législations. L'article 12, 2<sup>e</sup> alinéa de l'avant-projet de con-

vention dispose, en effet: "La question de savoir si le tireur est obligé de fournir provision à l'échéance et si le porteur a des droits spéciaux sur cette provision reste en dehors de la Loi et de la présente Convention."

Grâce à cette réserve, il pourra être donné satisfaction complète au désir nettement manifesté dans l'enquête faite par le Comité de législation commerciale de maintenir intact le système de la loi française sur la provision. Les intéressés estiment qu'il offre des garanties sérieuses et que l'on ne saurait y renoncer.

C. En France et dans presque tous les pays, la lettre de change ne peut se transmettre que par endossement. Cependant, en Grande-Bretagne et dans les États-Unis d'Amérique, la lettre de change au porteur, par suite transmissible de la main à la main, est admise. L'avant-projet de loi uniforme (art. 3, dernier alinéa) décide que la lettre de change peut être au porteur.

Des objections ont été faites contre l'admission de cette forme de lettre de change. On peut craindre dans quelques pays qu'elle porte atteinte au privilège d'émission des billets de banque. En outre, il y a là un titre qui ne peut pas facilement être escompté, par cela même que le tireur et le tiré accepteur sont seuls obligés, à l'exclusion des porteurs successifs. Aussi les États contractants ne seront pas obligés d'admettre la lettre de change au porteur. L'article 3 de la convention dispose: "Par dérogation à l'article 3, alinéa 4 de la loi, chaque État contractant a la faculté de prescrire qu'une lettre de change stipulée payable au porteur sera considérée comme nulle sur son territoire, si elle y a été créée, acceptée, avalisée ou si elle y est payable."

Mais les réserves de cette nature qui auront pour conséquence de laisser subsister sur quelques points la diversité des lois sont en nombre restreint. En général, l'avant-projet de loi uniforme pose des règles qui devront être appliquées dans tous les États contractants.

Parmi ces règles, les unes, c'est le plus grand nombre, sont conformes à celles de la législation ou de la jurisprudence française; les autres, au contraire, en diffèrent. Mais la plupart des règles de la dernière espèce ne feront que donner satisfaction à des demandes de réformes souvent faites en France ou constitueront des modifications de nos lois qu'on peut souvent trouver heureuses.

Nous ne pouvons citer tous les changements qui résulteront en France de la loi uniforme. Beaucoup ne touchent qu'à des questions de détail. Il suffira de donner ici quelques exemples.

A. Le Code de commerce français (art. 110) exige la mention de la valeur fournie dans la lettre de change. La valeur fournie est l'avantage procuré par le preneur de la lettre de change au tireur et en retour duquel le tireur crée le titre au profit du preneur.

Il y a là une exigence formaliste qui ne se justifie pas. On a fréquemment demandé qu'elle fût supprimée. Souvent, du reste, pour désigner la valeur fournie, on emploie des expressions vagues qui ne renseignent en rien sur sa nature. Il est même fréquent, dans la pratique, qu'on confond la valeur fournie avec la provision. Du reste, la loi du 14 juin 1865 sur les chèques n'exige pas l'indication de la valeur fournie.

L'avant-projet de loi uniforme ne fait pas figurer la valeur fournie parmi les mentions essentielles à insérer dans la lettre de change.

B. Le Code de commerce français (art. 137 et 138) admet un système très formaliste en matière d'endossement. Il détermine les

mentions que l'endossement doit contenir. Quand elles sont toutes réunies, l'endossement est translatif. A défaut de l'une d'elles, il ne vaut que comme procuration. La jurisprudence reconnaît qu'il y a là de simples présomptions légales qui, tout au moins entre les parties, peuvent être détruites par la preuve contraire.

Ces présomptions peuvent conduire à des résultats contraires à la volonté des parties. Aussi demande-t-on depuis longtemps que les dispositions formalistes dont il s'agit et les présomptions qui s'y rattachent soient abandonnées. Elles sont inconnues dans la plupart des lois étrangères.

L'avant-projet de loi uniforme décide que la seule signature de l'endosseur peut constituer un endossement translatif (art. 11, 2<sup>e</sup> alinéa). C'est, d'ailleurs, ce qu'admet déjà en France la loi du 14 juin 1865 (art. 1, dern. alinéa) en matière de chèque.

C. En cas de refus d'acceptation par le tiré, le code de commerce français (art. 120) n'accorde au porteur que le droit de réclamer à ses garants une caution pour assurer le paiement à l'échéance. Le tireur ou les endosseurs actionnés par le porteur ont seulement la faculté d'effectuer le remboursement de la lettre de change. Selon quelques législations, le porteur qui a éprouvé un refus d'acceptation, a, au contraire, le droit d'exiger du tireur et des endosseurs le paiement immédiat.

C'est cette dernière solution qu'adopte l'avant-projet de loi uniforme. Elle est conforme à l'usage le plus répandu. En fait, il est rare qu'une caution soit fournie; presque toujours, le tireur ou l'endosseur poursuivi use de la faculté de rembourser immédiatement le montant de la lettre de change.

D. En cas de refus de paiement à l'échéance, le code de commerce français (art. 162 et 165) exige que le défaut de paiement soit constaté par un protêt dressé le lendemain de l'échéance. Il est, en outre, exigé que le porteur notifie le protêt et une demande en justice dans un délai qui est, en principe, de quinze jours à partir du protêt, à ceux de ses garants qu'il veut actionner.

L'avant-projet de loi uniforme (art. 52, 2<sup>e</sup> alinéa) accorde deux jours pour la confection du protêt. En outre, il écarte la nécessité d'une notification. Il se contente d'un avis donné par lettre recommandée par le porteur à l'endosseur précédent.

Des dispositions analogues sont appliquées depuis longtemps dans quelques pays étrangers. La prolongation du délai du protêt faute de paiement est réclamée en France; de nombreuses propositions de lois ont été déposées à cet égard.

Quant au remplacement de la notification par un avis donné par lettre recommandée, il constitue une simplification qui à l'avantage d'éviter des frais.

Les rigueurs de la loi française se trouvent aussi atténuées au point de vue des conséquences que la négligence du porteur peut avoir pour lui. D'après l'avant-projet de loi uniforme, le défaut d'avis donné dans le délai légal n'est pas une cause de déchéance pour le porteur. Celui-ci est seulement tenu de réparer le préjudice que par sa négligence il a pu causer à ses garants.

E. Le code de commerce français (art. 189) admet, pour toutes les actions dérivant de la lettre de change, une prescription de cinq ans.

Cette prescription, bien qu'elle soit beaucoup plus courte que la prescription de droit commun (prescription de 30 ans) est considérée par beaucoup de personnes comme trop longue en présence de la



facilité et de la rapidité des communications. L'avant-projet de loi uniforme admet un délai de prescription inférieur à cinq ans.

Il ne modifie pas les dispositions de notre code de commerce seulement à ce point de vue. D'après le code de 1807, le délai de la prescription est le même pour toutes les actions dérivant de la lettre de change, qu'elles existent contre le tireur, contre les endosseurs et contre le tiré accepteur. L'avant-projet de loi uniforme (art. 82) admet une prescription de trois ans au profit de l'accepteur et de celui qui a avalisé sa signature et une prescription de six mois seulement pour le tireur, pour les endosseurs, et leurs garants. Cette dernière prescription est de très courte durée. Mais, pour expliquer qu'elle soit admise, deux considérations ont été invoquées. Les endosseurs et le tireur ne sont pas, comme le tiré accepteur, tenus principalement du paiement de la lettre de change. En outre, dans le système de l'avant-projet de loi uniforme, il n'y a plus, comme il en existe d'après le code de commerce français, de déchéance pour défaut de notification du protêt et d'une demande en justice dans la quinzaine du protêt.

Nous ne pouvons analyser ici toutes les dispositions de l'avant-projet de loi uniforme. Il importe seulement de remarquer que, sauf des exceptions très peu nombreuses, on s'est gardé d'y admettre des innovations absolues; l'avant-projet de loi uniforme n'a guère fait, en général, que s'approprier des règles qui, soit dans les pays étrangers, soit en France, sont appliquées depuis longtemps. On peut ainsi facilement les apprécier d'après les résultats pratiques qu'elles ont produits.

Quoi qu'il en soit, la lettre de change et le billet à ordre sont des instruments d'un usage trop répandu et d'une utilité trop grande pour que l'avant-projet de convention internationale et de loi uniforme élaborées à La Haye puissent être adoptés sans avoir été soumis à un examen approfondi. Au reste, ces avant-projets sont précisément soumis aux gouvernements pour provoquer leurs observations et le Gouvernement néerlandais a l'intention de réunir, en septembre 1911, une seconde conférence qui, saisie de ces observations, pourra arrêter, après les avoir étudiées, le texte définitif de la convention et de la loi uniforme.<sup>1</sup>

Une enquête dans laquelle les intéressés pourront être entendus paraît s'imposer. Après elle, seulement, il sera possible de formuler les critiques que les avant-projets peuvent provoquer et les modifications à ces avant-projets qu'il sera utile de réclamer. Mais il semble que, grâce aux réserves faites pour les lois nationales, l'avant-projet de loi uniforme ne se heurtera pas à des objections graves et qu'il pourra, au moins dans ses parties essentielles, recevoir l'approbation du Gouvernement français. Ainsi la France pourra contribuer à une œuvre poursuivie depuis longtemps et dont la réalisation constituera un grand bienfait pour le commerce international.

Veillez agréer, etc.

L. RENAULT.  
Ch. LYON-CAEN.  
Paul ERNEST-PICARD.  
Ch. ALPHAND, *Secrétaire*.

<sup>1</sup> Selon le vœu émis par la conférence de 1910, la seconde conférence aurait aussi à délibérer sur l'unification du droit relatif au chèque.





## APPENDIX E. PAPERS OF THE GERMAN DELEGATION.

### I. REPLY OF THE GERMAN DELEGATION TO THE QUESTIONNAIRE.

[Antworten der Kaiserlich Deutschen Regierung.]

Zu 1. Es wird empfohlen, dass die Konferenz sich nur mit der Vereinheitlichung des Wechselrechts befasst und sich dabei zunächst auf eine Regelung des Rechtes des gezogenen Wechsels beschränkt. Die Ausdehnung der Vereinbarung auf den eigenen Wechsel erscheint nicht dringlich, da dieser für den internationalen Verkehr keine erhebliche Bedeutung besitzt.

Die Frage des Scheckrechts wird zweckmässig einer späteren Konferenz vorzubehalten sein, die erst nach Erledigung des Wechselrechts zusammenzuberufen wäre.

Zu 2. Die Konferenz sollte nicht nur einzelne Regeln über Hauptfragen des Wechselrechts aufstellen, sondern das Wechselrecht durch ein einheitliches Gesetz ordnen, das die einzelnen Staaten gemäss dem zu treffenden Abkommen bei sich einzuführen hätten. Alle Materien, deren einheitliche Gestaltung für den internationalen Verkehr wichtig ist, sollten in dem Gesetz erschöpfend geregelt werden; die Regelung der übrigen Materien wäre der Landesgesetzgebung zu überweisen.

Zu 3. Ergänzende Kollisionsnormen sind in das einheitliche Gesetz für diejenigen Gegenstände aufzunehmen, deren Regelung der Landesgesetzgebung überlassen ist (vergl. die Beantwortung der Frage 36).

Von der Ausstellung von Regeln für die Kollision des einheitlichen Gesetzes mit den Gesetzen der Staaten, die dem Abkommen nicht beitreten, ist vorläufig abzusehen.

Zu 4a. Das Gesetz soll verlangen, dass die Urkunde in ihrem Texte ausdrücklich als Wechsel bezeichnet wird.

(b) Das Gesetz soll nicht verlangen, dass der Wechsel eine Angabe über den geleisteten Gegenwert enthält.

(c) Das Gesetz soll nicht verlangen, dass der Wechsel an einem anderen Orte als dem der Ausstellung zahlbar ist.

Zusatz. Als wesentliche Erfordernisse des gezogenen Wechsels soll das Gesetz, abgesehen von der Wechselklausel, bezeichnen:

1. den unbedingten Auftrag, eine bestimmte Geldsumme zu zahlen;
2. den Namen der Person, welche die Zahlung leisten soll (des Bezogenen);
3. den Namen der Person, an die oder an deren Order gezahlt werden soll (des Nehmers);
4. die Angabe der Verfallzeit.

Fehlt die Angabe der Verfallzeit, so soll der Wechsel als Sichtwechsel gelten (im übrigen vergl. die Beantwortung der Frage 16);

5. die Angabe des Zahlungsorts.

Mangels einer besonderen Angabe soll der bei dem Namen des Bezogenen angegebene Ort als Zahlungsort angesehen werden;

6. die Angabe des Ortes, des Monatstags und des Jahres der Ausstellung;

7. die Unterschrift des Ausstellers:

Zu 5a. Die Ausstellung eines Inhaberwechsels soll nicht gestattet sein.

(b) Die Ausstellung eines Wechsels an eigene Order soll zulässig sein.

(c) Die Ausstellung eines Wechsels für fremde Rechnung soll zulässig sein; doch regeln sich die Beziehungen zwischen demjenigen, für dessen Rechnung der Wechsel gezogen wird, und den Wechselbeteiligten nach dem bürgerlichen Rechte.

(d, e) Der Aussteller und jeder Indossant sollen das Recht haben, eine Notadresse auf den Wechsel zu setzen. Lautet die Notadresse auf den Zahlungsort, so musz ihr der Inhaber den Wechsel zur Zahlung vorlegen, um sich den Regresz gegen die Nachmänner des Adressanten zu wahren.

(f) Der Aussteller und jeder Indossant sollen das Recht haben, durch eine auf den Wechsel gesetzte Klausel die Erhebung des Protestes zu erlassen. Die Klausel enthebt den Inhaber nicht der Pflicht zur Vorlegung des Wechsels. Den Beweis, dass der Wechsel nicht vorgelegt ist, hat der zu führen, der die Klausel beigesetzt hat. Die Klausel soll nur gegen den gelten, der sie beigesetzt hat, und nicht von der Pflicht zum Ersatze der Protestkosten befreien.

(g) Der Aussteller soll nicht das Recht haben, seine Verbindlichkeit durch einen Vermerk im Wechsel auszuschliessen; ein solcher Vermerk gilt als nicht geschrieben.

(h) Der Aussteller soll befugt sein, durch einen Vermerk im Wechsel die Indossierung des Wechsels zu verbieten. Wird trotz des Verbots der Wechsel indossiert, so sollen das Indossament des Nehmers und alle folgenden Indossamente keine wechselrechtliche Wirkung haben.

Zu 6a. Der Aussteller eines gezogenen Wechsels soll verpflichtet sein, dem Nehmer und jedem Indossatar auf Verlangen mehrere Exemplare des Wechsels zu erteilen.

(b) Alle Exemplare des Wechsels sollen gleichlauten und im Texte der Urkunde als Prima, Sekunda, Tertia usw. bezeichnet sein; anderenfalls soll jedes Exemplar als ein besonderer Wechsel gelten.

Die Aufnahme der kassatorischen Klausel in die einzelnen Exemplare soll nicht erforderlich sein.

(c) Der Inhaber eines Exemplars verliert seine Rechte, wenn ein anderes Exemplar bezahlt wird. Doch behält der gehörig ausgewiesene Inhaber eines Exemplars, das bei der Zahlung nicht zurückgegeben worden ist, seine Rechte gegen den Indossanten, der die einzelnen Exemplare an verschiedene Personen indossiert hatte, und gegen alle späteren Indossanten, deren Unterschriften sich auf dem nicht zurückgegebenen Exemplare befinden, sowie gegen den Bezogenen, der dieses Exemplar mit seinem Akzept versehen hatte.

(d) Wechselkopien sollen eine Abschrift des Wechsels sowie seiner Indossamente und Vermerke enthalten und angeben, wieweit die Abschrift reicht.

Jedes auf die Kopie gesetzte Original-Indossament soll den Indossanten wie ein auf dem Wechsel befindliches Indossament verpflichten.

**Zu 7.** Besondere Bestimmungen über den Dokumentenwechsel sollen nicht getroffen werden.

**Zu 8a.** Der Nehmer soll auch dann, wenn der Wechsel die Orderklausel nicht enthält, berechtigt sein, durch ein Indossament den Wechsel an einen anderen zu übertragen.

Das Indossament soll auf den Wechsel, die Kopie oder ein mit dem Wechsel oder der Kopie verbundenes Blatt gesetzt werden.

Durch das Indossement sollen alle Rechte aus dem Wechsel auf den Indossatar übergehen, insbesondere auch die Befugnis, den Wechsel weiter zu indossieren. Doch soll der Indossant befugt sein, durch einen Vermerk in dem Indossamente die Weiterbegebung des Wechsels mit der Wirkung zu untersagen, dass die Nachmänner seines Indossatars gegen ihn keinen Regresz haben.

Der Indossant soll jedem späteren Inhaber für die Annahme und Zahlung des Wechsels haften; er soll jedoch das Recht haben, durch einen Zusatz zu seinem Indossamente seine Verbindlichkeit aus dem Wechsel auszuschließen.

(b) Das Blankoindossament soll zugelassen werden. Als ein solches soll es auch gelten, wenn der Indossant auf die Rückseite des Wechsels oder der Kopie oder auf ein mit dem Wechsel oder der Kopie verbundenes Blatt nur seinen Namen schreibt.

(c) Ist dem Indossament die Bemerkung "zur Einkässierung," "in Prokura" oder eine anderer die Bevollmächtigung ausdrückender Zusatz beigefügt, so soll der Indossatar ermächtigt sein, alle Rechte aus dem Wechsel als Bevollmächtigter im Namen des Auftraggebers geltend zu machen. Er soll jedoch nur befugt sein, den Wechsel durch ein Prokuraindossement, nicht durch ein Vollindossament, weiter zu übertragen.

(d) Ist ein Wechsel nach Erhebung des Protestes mangels Zahlung oder nach Ablauf der Protestfrist indossiert worden, so soll das Indossament nur die Wirkungen einer Zession haben. Der Zahlende soll jedoch nicht verpflichtet sein, die Echtheit des Indossaments zu prüfen.

**Zu 9.** Das Gesetz soll hierüber keine Bestimmungen treffen.

**Zu 10.** Der Inhaber soll berechtigt sein, den Wechsel sofort zur Annahme vorzulegen. Abgesehen von den unter 10 a, 10 b erwähnten Ausnahmen soll es nicht gestattet sein, die Vorlegung zu verbieten oder vorzuschreiben.

(a) Der Aussteller eines Domizilwechsels soll berechtigt sein, in dem Wechsel die Vorlegung zur Annahme vorzuschreiben.

Die Nichtbeachtung dieses Gebots soll den Verlust des Regresses gegen den Aussteller und die Indossanten zur Folge haben.

(b) Wechsel, die auf eine bestimmte Zeit nach Sicht lauten, sollen binnen sechs Monaten nach der Ausstellung zur Annahme vorgelegt und bei nicht erhaltener Annahme protestiert werden; hat der Aussteller im Wechsel eine andere Frist bestimmt, so soll diese maßgebend sein. Die Versäumung der Frist soll den Verlust des Regresses gegen den Aussteller und die Indossanten zur Folge haben.

Ist in einem Indossament eine besondere Frist angegeben, so soll bei deren Versäumung die Verpflichtung des Indossanten erlöschen (wegen der Verpflichtung zur Vorlegung von Sichtwechseln vergl. die Beantwortung der Frage 16).

**Zu 11 a.** Die Annahme eines Wechsels soll auf dem Wechsel selbst schriftlich geschehen.

Es soll als unbeschränkte Annahme gelten, wenn der Bezogene seinen Namen ohne Zusatz auf die Vorderseite des Wechsels schreibt.

Ebenso soll jede auf den Wechsel geschriebene und von dem Bezogenen unterschriebene Erklärung als unbeschränkte Annahme gelten, sofern sie nicht ausdrücklich das Gegenteil ausspricht.

(b) Der Bezogene soll durch die Annahme auch dem Aussteller gegenüber verpflichtet werden, die von ihm angenommene Summe bei Verfall zu zahlen.

(c) Der Akzeptant soll das Recht haben, den Annahmevermerk zu streichen, solange er noch nicht sich des Besitzes des Wechsels begeben oder eine aus dem Wechsel berechnigte Person von der Annahme schriftlich in Kenntnis gesetzt hat.

Zu 12(a). Der Bezogene soll das Recht haben, die Annahme auf einen Teil der Wechselsumme zu beschränken. Andere Einschränkungen sollen als gänzliche Verweigerung der Annahme gelten; der Akzeptant soll jedoch nach dem Inhalt seiner Erklärung haften.

Die Angabe einer am Zahlungsorte befindlichen Zahlstelle soll nicht als eine Einschränkung der Annahme gelten.

(b c) Der Inhaber soll im Falle der Annahmeverweigerung berechnigt sein, vom Aussteller und von den Indossanten Zahlung zu verlangen. Ein Wahlrecht zwischen Zahlung und Sicherheitsleistung soll weder dem Inhaber noch den Regresspflichtigen zustehen (über den Gegenstand des Regresses, insbesondere über den Abzug eines Diskonts vergl. die Beantwortung der Frage 20).

Zu 13. Der Inhaber soll auch im Falle der Zahlungsunfähigkeit des Bezogenen berechnigt sein, Zahlung zu verlangen.

Zu 14. Eine Ehrenannahme soll zulässig sein, wenn ein Wechsel wegen verweigerter Annahme oder wegen Zahlungsunfähigkeit des Bezogenen protestiert ist.

Es soll sowohl den in dem Wechsel benannten Notadressen als anderen Personen, insbesondere auch dem Bezogenen, der den Wechsel nicht angenommen hat, gestattet sein, einen Wechsel zu Ehren eines Wechselverpflichteten anzunehmen. Der Inhaber soll nicht verpflichtet sein, eine Ehrenannahme zuzulassen.

Die Ehrenannahme soll auf dem Wechsel erfolgen und die Person des Honoraten bezeichnen. Hat der Ehrenannehmer die Bezeichnung des Honoraten in der Annahmeerklärung unterlassen, so soll der Aussteller als Honorat gelten.

Durch die Ehrenannahme soll der Ehrenannehmer den Nachmännern des Honoraten gemäsz dem Inhalt seiner Annahmeerklärung zur Zahlung des Wechsels verpflichtet werden, falls der Bezogene bei Verfall nicht zahlt. Diese Verpflichtung soll erlöschen, wenn der Wechsel, nachdem er dem Bezogenen zur Zahlung vorgelegt und wegen nicht erhaltener Zahlung protestiert ist, dem Ehrenannehmer nicht bis zum Ablauf der Protestfrist zur Zahlung vorgelegt ist.

Wird eine Ehrenannahme zugelassen, so sollen der Inhaber und die Nachmänner des Honoraten nicht berechnigt sein, Zahlung mangels Annahme oder wegen Zahlungsunfähigkeit des Bezogenen zu verlangen.

Zu 15a. Die Übernahme der Haftung für eine Wechselverbindlichkeit in der Form des Aval soll zugelassen werden.

(b) Der Aval soll durch Mitunterzeichnung einer Erklärung auf dem Wechsel oder der Kopie erfolgen; der Avalist soll berechnigt sein, seine Haftung auf einen Teil der Hauptschuld zu beschränken.



Der Avalisst soll mit dem Hauptschuldner solidarisch haften.

Zu 16. Ist in dem Wechsel ein bestimmter Tag als Zahlungstag bezeichnet, so soll der Verfall an diesem Tage eintreten.

Bestimmungen über Mesz- und Marktwechsel sind in das Gesetz nicht aufzunehmen.

Ein Sichtwechsel soll bei der Vorzeigung fällig werden. Ein solcher Wechsel soll bei Verlust des Regresses gegen den Aussteller und die Indossanten binnen sechs Monaten nach der Ausstellung zur Zahlung vorgelegt werden. Hat der Aussteller im Wechsel eine andere Frist bestimmt, so soll diese maßgebend sein. Ist in einem Indossament eine besondere Frist angegeben, so soll bei deren Versäumung die Verpflichtung des Indossanten erlöschen.

Usancen sind abzuschaffen.

Bei Wechseln, die mit dem Ablauf einer bestimmten Zeit nach Sicht oder nach Dato zahlbar sind, soll der Verfall eintreten:

1. wenn die Frist nach Tagen bestimmt ist, an dem letzten Tage der Frist;

2. wenn die Frist nach Wochen, Monaten oder einem mehrere Monate umfassenden Zeitraum bestimmt ist, an dem Tage der Zahlungswoche oder des Zahlungsmonats, der durch seine Benennung oder Zahl dem Tage der Ausstellung oder Vorlegung zur Annahme entspricht; fehlt dieser Tag in dem Zahlungsmonate, so soll der Verfall am letzten Tage des Zahlungsmonats eintreten.

Zu 17a. Der Inhaber soll berechtigt sein, die Zahlung des Wechsels am Verfalltag, wenn jedoch der Verfall an einem Sonntag oder allgemeinen Feiertag eintritt, am nächsten Werktag zu verlangen. Welche Tage als allgemeine Feiertage anzusehen sind, soll sich nach dem Rechte des Zahlungsorts bestimmen. Respekt- und Kassiertage sollen beseitigt werden.

(b) Der Inhaber soll nicht verpflichtet sein, eine Zahlung auf den Wechsel vor Verfall anzunehmen.

(c) Eine bei Verfall an den Inhaber eines indossierten Wechsels geleistete Zahlung soll gültig sein, wenn dieser durch eine zusammenhängende, bis auf ihn hinuntergehende Reihe von Indossamenten zur Geltendmachung der Rechte aus dem Wechsel legitimiert ist. Der Zahlende soll nicht verpflichtet sein, die Echtheit der Indossamente zu prüfen.

Der Bezogene, der den Wechsel vor Verfall bezahlt, soll dies auf eigene Gefahr tun.

(d) Eine Bestimmung darüber, ob die Zahlung auf einen Wechsel auch in Noten mit Legalkurs geleistet werden kan, soll in dem Gesetze nicht getroffen werden.

Lautet der Wechsel auf eine Münzsorte, die am Zahlungsorte keinen Umlauf hat, so soll es gestattet sein, die Wechselsumme nach ihrem Kurswert zur Verfallzeit am Zahlungsort in Landesmünze zu zahlen, sofern nicht der Aussteller durch den Gebrauch des Wortes „effektiv“ oder eines ähnlichen Zusatzes die Zahlung in der im Wechsel benannten Münzsorte ausdrücklich bestimmt hat.

Ist der Umrechnungskurs vom Aussteller oder nach seiner aus dem Wechsel ersichtlichen Anweisung von einem Indossanten beigelegt worden, so soll der Wechsel nach diesem Kurse in der Landesmünze zu zahlen sein.

(e) Der Inhaber soll nicht das Recht haben, eine ihm angebotene Teilzahlung zurückzuweisen, selbst wenn die Annahme auf die ganze Wechselsumme erfolgt ist.

Zu 18a. Die Ehrenzahlung soll sowohl den Notadressen und den Ehrenakzeptanten, als anderen Personen, nicht aber dem Akzeptanten gestattet sein. Sie darf zu Gunsten jedes Wechselverpflichten mit Ausnahme des Akzeptanten erfolgen.

(b) Eine Ehrenzahlung soll, falls der Wechsel mangels Annahme, wegen Zahlungsunfähigkeit des Bezogenen oder mangels Zahlung protestiert ist, bis zum Ablauf der Protestfrist mangels Zahlung zulässig sein.

Der Inhaber soll über die Ehrenzahlung eine Quittung auf dem Wechsel ausstellen, die den Namen des Ehrenzahlers und des Honoraten enthält. Ist der Name des Honoraten aus der Quittung nicht ersichtlich, so soll der Aussteller als Honorat gelten.

(c) Durch die Zahlung soll der Ehrenzahler Regreszrechte wie ein Indossant, der den Wechsel eingelöst hat, gegen den Honoraten, dessen Vormänner und den Akzeptanten erhalten; die Nachmänner des Honoraten sollen befreit werden.

Enthält der Wechsel ein Ehrenakzept, das auf den Zahlungsort lautet, so soll der Inhaber den Wechsel mit dem Protest dem Ehrenakzeptanten innerhalb der Protestfrist zur Zahlung vorlegen. Unterläßt er dies, so soll er den Regresz gegen die Nachmänner des Honoraten verlieren; das Gleiche soll gelten, wenn der Inhaber eine ihm innerhalb der Protestfrist angebotene volle Ehrenzahlung zurückweist.

Zu 19 a. Voraussetzung des Regresses mangels Zahlung soll die rechtzeitige Vorlegung des Wechsels und die rechtzeitige Aufnahme des Protestes mangels Zahlung sein.

Auch für den Regresz mangels Annahme oder wegen Zahlungsunfähigkeit des Bezogenen soll die Aufnahme des Protestes erforderlich sein. Bei Zahlungsunfähigkeit des Bezogenen soll der Wechsel zur Zahlung vorgelegt werden.

Zur Erhaltung des Anspruchs gegen den Akzeptanten soll es der Vorlegung zur Zahlung und der Erhebung des Protestes nicht bedürfen.

(b) Der Inhaber eines mangels Annahme, wegen Zahlungsunfähigkeit des Bezogenen oder mangels Zahlung protestierten Wechsels soll verpflichtet sein, seinen unmittelbaren Vormann innerhalb zweier Tage von dem Grunde der Protesterhebung schriftlich zu benachrichtigen. Der benachrichtigte Vormann soll binnen zwei Tagen nach Empfang der Nachricht seinen nächsten Vormann in gleicher Weise benachrichtigen. Hat ein Indossant den Wechsel ohne eine Ortsbezeichnung weiter begeben, so soll die Nachricht an seinen Vormann gegeben werden. Der Inhaber oder Indossant, der die Benachrichtigung unterläßt oder von der vorgeschriebenen Reihenfolge abweicht, soll zum Ersatze des daraus entstehenden Schadens verpflichtet sein.

Zu 20. Es soll zwischen dem Regresz des Inhabers, welcher den Wechsel mangels Annahme, wegen Zahlungsunfähigkeit des Bezogenen oder mangels Zahlung hat protestieren lassen (Inhaberregresz) und dem Regresz des Indossanten, der den Wechsel eingelöst hat (Rembursregresz), unterschieden werden.

1. Der Regresz des Inhabers mangels Annahme oder wegen Zahlungsunfähigkeit des Bezogenen soll sich beschränken auf:

(a) die Wechselsumme abzüglich eines Diskonts für die Zeit vom Tage der Regresznahme bis zum Verfalltage des Wechsels;

- (b) die Protestkosten und andere Auslagen;
- (c) eine Provision von ein Sechstel vom Hundert.

Der Regresz des Inhabers wegen nicht erhaltener Zahlung soll sich beschränken auf:

(a) die nicht gezahlte Wechselsumme nebst Zinsen vom Verfalltag ab;

- (b) die Protestkosten und andere Auslagen;
- (c) eine Provision von ein Sechstel vom Hundert.

2. Der Indossant, welcher den Wechsel eingelöst hat, soll berechtigt sein, von den ihm verpflichteten Wechselschuldnern zu fordern:

(a) die von ihm gezahlte Summe nebst Zinsen vom Tage der Zahlung;

- (b) die ihm entstandenen Kosten;
- (c) eine Provision von ein Sechstel vom Hundert.

Die Höhe der Zinsen soll durch das Landesrecht bestimmt werden.

Der Regreszpflichtige soll zur Zahlung der Regreszsumme nur gegen Auslieferung des Wechsels nebst Protestes und einer quittierten Rückrechnung verpflichtet sein.

Zu 21. Der Inhaber eines mangels Annahme, wegen Zahlungsunfähigkeit des Bezogenen oder mangels Zahlung protestierten Wechsels soll berechtigt sein, die Wechselklage gegen alle Wechselverpflichteten oder auch nur gegen einige oder einen derselben anzustellen, ohne dadurch seine Rechte gegen die nicht in Anspruch genommenen Verpflichteten zu verlieren. Er soll an die Reihenfolge der Indossamente nicht gebunden sein.

Zu 22. Über die Präklusion der Regreszansprüche des Inhabers soll eine allgemeine Regel in dem Gesetze nicht aufgestellt werden.

Zu 23, 24. Für abhanden gekommene Wechsel soll ein Amortisationsverfahren vorgesehen werden.

Nach Einleitung des Amortisationsverfahrens und Eintritt der Fälligkeit soll der Eigentümer des abhanden gekommenen Wechsels befugt sein, von dem Akzeptanten die Zahlung der Wechselsumme zu fordern, wenn er bis zur Amortisation Sicherheit bestellt. Er soll nicht das Recht haben, von dem Aussteller eine neue Ausfertigung des Wechsels zu verlangen.

Durch die Amortisation sollen die Rechte aus dem verlorenen Wechsel erlöschen. Derjenige, zu dessen Gunsten die Amortisation ausgesprochen ist, soll gegen den Aussteller und den Akzeptanten die Rechte geltend machen können, die ihm zustehen würden, wenn er noch im Besitze des Wechsels wäre.

Das Amortisationsverfahren soll durch die Landesgesetze geregelt werden. Hierbei sind folgende Grundsätze zu beobachten: Für das Amortisationsverfahren soll das Gericht des Zahlungsorts zuständig sein; das Verfahren soll nur eingeleitet werden, wenn der Verlust des Wechsels glaubhaft gemacht worden ist. Das Aufgebot soll in dem für amtliche Mitteilungen bestimmten Blatte des Staates, in dem das Verfahren eingeleitet ist, veröffentlicht werden; die Aufgebotsfrist soll vom Verfalltag ab mindestens sechs Monate betragen. Die Amortisation soll auf dieselbe Weise wie das Aufgebot bekannt gemacht werden.

Zu 25. Der gehörig ausgewiesene Inhaber soll zur Herausgabe des Wechsels nur verpflichtet sein, wenn er den Wechsel in bösem Glauben erworben hat oder wenn ihm bei der Erwerbung des Wechsels eine grobe Fahrlässigkeit zur Last fällt.

Zu 26. Aus einer Urkunde, der ein wesentliches Erfordernis des Wechsels fehlt, soll keine Verbindlichkeit nach Wechselrecht entstehen. Die auf eine solche Urkunde gesetzten Erklärungen sollen keine Wechselkraft haben.

Der Landesgesetzgebung soll es nicht gestattet sein, für einen Wechsel neben den Erfordernissen, die das einheitliche Gesetz ausstellt, noch andere wesentliche Erfordernisse zu verlangen.

Die Einrede, dasz ein Wechselblankett der Vereinbarung zuwider ausgefüllt worden sei, soll gegen den dritten redlichen Inhaber nicht erhoben werden dürfen.

Welche Wirkung das Vorhandensein von Durchstreichungen, Radierungen und ähnlichen Formfehlern auf die Rechte aus dem Wechsel hat, soll in dem Gesetze nicht geregelt werden.

Zu 27. Besondere Bestimmungen über die Wirkung von "suppositions" sollen in das Gesetz nicht aufgenommen werden.

Zu 28a. Die Tatsache, dasz die Unterschrift des Ausstellers gefälscht ist, soll dem echten Akzept und den echten Indossamenten nicht die Wirkung nehmen.

Aus einem Wechsel, der mit einem gefälschten Akzept oder Indossamente versehen ist, sollen sämtliche Indossanten und der Aussteller, deren Unterschriften echt sind, haften.

Finden sich auf einem Wechsel Unterschriften von Personen, die eine Wechselverbindlichkeit nicht eingehen können, so soll dies auf die Verbindlichkeit der übrigen Wechselverpflichteten keinen Einfluss haben.

(b) Die Wirkungen einer materiellen Veränderung des Wechselinhalts sollen durch das Gesetz nicht geregelt werden.

Zu 29a. Die Erhebung des Protestes mangels Zahlung soll am Zahlungstage zulässig sein und spätestens am zweiten Werktag nach dem Zahlungstage geschehen.

Der Protest soll an dem Orte, wo die Zahlung verlangt werden kann, oder, wenn es sich um einen Protest mangels Annahme handelt, am Vorlegungsort erhoben werden.

Die Regelung der Form des Protestes soll der Landesgesetzgebung überwiesen werden, doch musz der Protest mit Sicherheit erkennen lassen, auf welchen Wechsel er sich bezieht.

Die Tageszeiten, zu denen die Aufnahme eines Protestes erfolgen kann, und die Örtlichkeit, an der die Protesterhebung vorzunehmen ist, sollen sich nach dem Landesrechte bestimmen.

Wird die rechtzeitige Vorlegung des Wechsels oder die rechtzeitige Protesterhebung durch allgemeine Notstände an dem Orte, an dem sie vorzunehmen ist, verhindert, so soll die Frist zur Vornahme der Handlung so weit erstreckt werden, als es nötig ist, um nach dem Aufhören des Notstandes das Versäumte nachzuholen.

(b) Über die Zulässigkeit des Postprotestes soll die Landesgesetzgebung entscheiden.

Zu 30 a. Der Anspruch gegen den Akzeptanten soll in drei Jahren verjähren.

(b) Die Regressansprüche gegen die Indossanten und den Aussteller sollen in sechs Monaten verjähren.

Zu 31. Die Verjährung des Anspruchs gegen den Akzeptanten soll mit dem Verfalltag des Wechsels beginnen.

Die Verjährung der Regressansprüche des Inhabers soll, wenn er den Wechsel mangels Annahme oder wegen Zahlungsunfähigkeit des

Bezogenen hat protestieren lassen, mit dem Verfalltag des Wechsels, wenn er den Wechsel mangels Zahlung hat protestieren lassen, mit dem Tage des erhobenen Protestes beginnen.

Die Verjährung der Regreszansprüche des Indossanten, der den Wechsel eingelöst hat, soll vom Tage der Zahlung, wenn jedoch vor der Zahlung Klage gegen ihn erhoben worden ist, vom Tage der Klageerhebung laufen.

Der Verfalltag, der Zahlungstag oder der Tag der Klageerhebung soll bei der Berechnung der Frist nicht mitgerechnet werden.

Zu 32. Das Gesetz soll hierüber keine Bestimmung treffen.

Zu 33 bis 35. Sollte die Vereinbarung auf den eigenen Wechsel ausgedehnt werden (vergl. die Beantwortung der Frage 1), so werden die Bestimmungen über den gezogenen Wechsel insoweit für anwendbar zu erklären sein, als sich nicht ein anderes aus dem Fehlen des Bezogenen ergibt.

Zu 36 a. Die Fähigkeit, sich durch Erklärungen auf einem Wechsel zu verpflichten, soll nach den Gesetzen des Vertragsstaats beurteilt werden, dem der Aussteller der Erklärung angehört. Wird jedoch die Erklärung in einem Vertragsstaat abgegeben, nach dessen Gesetzen der Aussteller der Erklärung wechselfähig sein würde, so soll sie auch in dem Falle, dass er nach den Gesetzen seines Staates nicht wechselfähig ist, rechtsgültig sein.

(b) Es erübrigt sich, innerhalb des Vertragsgebiets Regeln des internationalen Privatrechts über die Form einer Wechselerklärung aufzustellen.

(c) Über die Form der mit einem Wechsel zur Ausübung oder Erhaltung des Wechselrechts vorzunehmenden Handlungen soll das Recht des Ortes entscheiden, an dem die Handlung vorzunehmen ist.

(d) Die Nichtbeobachtung der Stempelvorschriften soll auf die Gültigkeit des Wechsels und der Wechselklärungen ohne Einfluss sein.





## APPENDIX F. PAPERS OF THE SPANISH DELEGATION.

### REPORT OF THE SPANISH DELEGATION TO THE MINISTER OF JUSTICE.

**EXCELENTÍSIMO SEÑOR:**

Honrado por V. E. con el nombramiento de delegado del Gobierno español en la Conferencia Internacional celebrada en La Haya para tratar de la unificación del derecho relativo á la letra de cambio y al pagaré á la orden, considera el que suscribe obligación inexcusable, que se dispone á cumplir, la de rendirle cuenta de su mandato.

Sólo la conciencia de los altos deberes que impone la distinción, cuanto más inmerecida más estimada, de ser elegido para ostentar la representación de su patria en un Congreso Internacional, puede justificar la aceptación de un cargo tan superior á mis personales condiciones.

Era tan importante y fundamental la materia sometida á la conferencia, que hubiese requerido el concurso de las personas más peritas en el derecho mercantil y en la práctica del comercio y de la Banca de nuestro país; pero no habiendo sido designada ninguna de tales circunstancias, el delegado del ministerio de gracia y justicia ha tratado de suplir, con su solícita y perseverante labor en los trabajos de la conferencia, la falta de más valiosas cualidades. Por fortuna para nuestro país, han sido compensadas tales deficiencias merced á la representación que como delegado diplomático de España tuvo en aquel congreso nuestro dignísimo Ministro plenipotenciario en La Haya, D. José de la Rica y Calvo, cuya singular competencia en asuntos comerciales, unida á su excepcional cultura, le han hecho merecer en el mundo diplomático el alto concepto de que goza.

Para que tenga el presente trabajo la utilidad práctica que á sus fines conviene, se ha comprendido en él cuanto pueda contribuir al más cabal conocimiento del importantísimo asunto á que se refiere.

Por ello se consignan, en primer término, en esta parte preliminar, los antecedentes de la conferencia y su organización y funcionamiento; se insertan á continuación las respuestas que dió por escrito el delegado del ministerio de gracia y justicia á cada uno de los temas del Cuestionario, con arreglo á las instrucciones recibidas, haciendo resaltar su conformidad ó desacuerdo con lo estatuido en nuestro código de comercio; se consignan después, del modo más sucinto posible, las opiniones sustentadas por la representación de España en las sesiones celebradas por la sección quinta, á que le correspondió pertenecer, con expresión de la resoluciones adoptadas en ella sobre todas y cada una de las cuestiones discutidas, para que pueda juzgarse con tales datos cómo cumplió su misión el que suscribe; y, por último, se inserta literalmente el texto de los dos anteproyectos adoptados por la conferencia para ser sometidos á la consideración y acuerdo definitivo de los Gobiernos representados.

Con tal suma de antecedentes y de opiniones podrán todas aquellas entidades y corporaciones á quienes tan importantes materias interesan, y este es el fin principal á que responde el presente trabajo, elevar al Gobierno sus observaciones, si así lo estiman oportuno, para que puedan ser consideradas y estimadas al adoptar resolución definitiva, ya sea proponiendo enmiendas al texto votado por la conferencia, ó ya por manifestación de total conformidad, si á tal solución pudiera llegarse.

El Gobierno de los Países Bajos, á propuesta de los de Alemania é Italia, convocó á una conferencia internacional para tratar de la unificación del derecho relativo á la letra de cambio; y como base, primero de los estudios, después de las conclusiones escritas, y finalmente de las deliberaciones de la conferencia, que las concretó en forma de anteproyectos, remitió á todas las naciones invitadas á tan importante congreso un detallado Cuestionario, comprensivo de cuanto interesa examinar y resolver en materia de tanta transcendencia para el comercio mundial.

A tan calificado llamamiento, para ocuparse de una de las materias que revisten hoy mayor importancia por el incesante desenvolvimiento del comercio y por la universalidad de los territorios á que sirve de intermediaria la letra de cambio para la movilización de la riqueza, no es de extrañar que respondieran 41 Naciones, es decir, la casi totalidad de las que gozan del bien inestimable de la civilización; y que todas las que se han hecho representar hayan elegido para sus delegados, con la única excepción del que suscribe, á personalidades de las más significadas en la cátedra, en la banca, en el foro y en los centros oficiales.

Inauguradas en La Haya las sesiones de la conferencia internacional el día 23 de Junio de 1910, con asistencia de 57 delegados, representantes de 41 Naciones, se acordó formar five secciones—distribuyendo en ellas á todos los países representados—, y además una comisión central y otra de derecho internacional privado.

La composición de las Secciones fué la siguiente:

*Primera.*—Argentina, Bulgaria, Francia, Haiti, Noruega, Salvador y Suiza. Presidente, Mr. Lyon-Caen.

*Segunda.*—Alemania, Brasil, Chile, China, Italia, Montenegro, Rusia y Siam. Presidente, Mr. Vivante.

*Tercera.*—Costa Rica, Dinamarca, Gran Bretaña, Hungría, Japón, Países Bajos y Uruguay. Presidente, Sir Mackenzie Chalmers.

*Cuarta.*—Austria, Luxemburgo, México, Nicaragua, Portugal y Servia. Presidente, Mr. Félix Mayer.

*Quinta.*—Bélgica, España, Estados Unidos de América, Suecia, Turquía y Paraguay. Presidente, Mr. Beernaert.

La comisión central estaba formada por MM. Simons, Fischel, Van Gelderen, Mayer, Hammerschlag, Nagy, Beernaert, De Langaard Menezes, Cloos, Lyon-Caen, Ernest-Picard, Chalmers, Jackson, Vivante, Würth-Weiler, Asser, Jitta, Schneider, Ehrensvärd, Carlin y Osman Halim Bey, y presidida por el Presidente de la Conferencia, Mr. Asser.

La comisión de derecho internacional privado estuvo presidida por Mr. Kriege, y de ella formaban parte MM. Renault, Beichmann, Beernaert y Asser.

Se acordó, después de cambiar impresiones en las dos primeras sesiones plenas, que todas las Secciones discutieren y votasen con-

clusiones respecto á cada uno de los temas del Cuestionario, excepto el último, que sería examinado, como su índole exigía, por la comisión de derecho internacional privado; y que una vez terminados esos trabajos, se reuniese la comisión central, para armonizar y refundir las conclusiones votadas por cada una de las cinco Secciones, realizado lo cual, se sometería el trabajo así elaborado, á las deliberaciones de la conferencia, en sesión plenaria.

La delegación española, que había presentado en una de las primeras sesiones la respuesta del ministerio de gracia y justicia al Cuestionario, redactada en francés, y con sujeción á las instrucciones recibidas, tomó parte activa en los trabajos de la Sección, no pudiendo hacerlo en las de la comisión central, por no haber tenido la honra de pertenecer á ella.

Realizados los trabajos conforme al plan expuesto y tras una laboriosa gestación de que puede dar idea la desacostumbrada duración de sus sesiones y el gran número de éstas (comenzaron el 23 de Julio y no finalizaron hasta el 25 del siguiente mes), la comisión central, de acuerdo con la opinión de casi todos los delegados, estimó que ofrecía evidentes ventajas la redacción de las conclusiones definitivas en forma de anteproyectos de ley; no sólo porque así se concretaban más las opiniones, al darlas forma de preceptos, sino porque facilitaban el ulterior estudio y la presentación de enmiendas para la discusión en la conferencia siguiente, donde había de votarse ya el texto que habría de tener fuerza obligatoria mediante convenios ó Tratados internacionales. En cumplimiento de ese acuerdo, presentó en las últimas sesiones plenas su trabajo que, con algunas modificaciones en ellas propuestas, constituye el texto de los dos anteproyectos, aceptados no más que con este carácter, y que van insertos al final.

El primero es un anteproyecto de "Convención sobre la unificación del derecho relativo á la letra de cambio y á pagaré á la orden" contiene 26 artículos y tiene meramente el carácter de tratado internacional. El segundo, que es el anteproyecto de una "Ley uniforme sobre la letra de cambio y el pagaré á la orden" ofrece los caracteres y estructura de un código del derecho cambiario, fácilmente adaptable á cualquiera de los de comercio que se hallan en vigor. Consta de XIV capítulos y 88 artículos, y en él podrán apreciarse, mediante estudio comparativo, las materias en que no hay completa conformidad de su texto con las conclusiones votadas por la delegación española.

Al remitir el gobierno holandés en 16 de Septiembre último el protocolo de clausura, que contiene el texto de los dos anteproyectos que la conferencia acordó someter á la apreciación de los Gobiernos representados, si bien á condición de que no se hiciesen públicos hasta después del 15 de Octubre, manifiesta su deseo de que el Gobierno español, como lo harán los de las otras naciones, tenga á bien participarle, antes de 1.º de Febrero de 1911, si aprueba los citados anteproyectos ó tiene algunas observaciones que hacer, en cuyo caso habrán de remitirse antes de la expresada fecha para que puedan ser comunicadas á los otros países que asistieron á la conferencia. De este modo podrán ser recíprocamente conocidas las opiniones de todos los países antes de la ulterior conferencia que ha de celebrarse en La Haya en Septiembre del próximo año, con el mandato de ultimar definitivamente los dos proyectos, á fin de que el convenio pueda firmarse entonces por los plenipotenciarios de los Estados que le consideren conveniente á sus intereses comerciales.

Y con objeto de que todas las entidades, corporaciones y personalidades que por razón de su especial competencia están llamadas á dar su opinión acerca de tan importantes anteproyectos conozcan los antecedentes y elaboración de éstos, ha estimado el que suscribe que no debe omitir, al rendir al Gobierno cuenta de su mandato, ningún detalle ó circunstancia que pueda constituir elemento de juicio para apreciar tanto las ventajas como los inconvenientes que su adopción pueda ocasionar al comercio español, en su más amplia acepción, ó sea en todas las relaciones jurídicas y económicas que nacen del tráfico mercantil.

Aunque acaso parezca extraño, se ha preferido transcribir el texto original de ambos anteproyectos, ó sea el texto francés, no sólo porque la cultura de las personas que han de estudiarlos hace innecesaria la traducción, sino también porque las imperfecciones inevitables en esta clase de trabajos podrían dar ocasión á algún error de interpretación. Lo mismo se hace, por iguales razones, con el texto de las preguntas del Cuestionario.

Altamente recompensado se consideraría el que suscribe, si llegase á reconocerse por cuantos tengan á bien examinar este trabajo, el solícito interés de la delegación española de que prevaleciesen en la ley uniforme aquellos preceptos de nuestra legislación que considera más justos y convenientes que otros análogos, y de que fuesen atendidas las observaciones formuladas para alcanzar la mayor perfección posible, así en el concepto jurídico como en su expresión y desenvolvimiento; y quisiera también expresar aquí su deseo de que tan modesta labor pueda servir, ya que no de estímulo, de punto de partida, á los muchos elementos valiosos con que contamos en nuestra patria, para que tomen parte más activa que hasta el presente en la altísima función que les incumbe de orientar á los Gobiernos, mediante la exposición de sus juicios y pareceres, en cuestiones que afectan tanto á los intereses generales del país, como lo son cuantas se relacionan con el tráfico comercial y su signo más característico.

Si esta pretensión parece excesiva, expuesta por quien carace de significación personal para formularla, sírvame de excusa mi vivísimo anhelo, estimulado por la atmósfera que se respira en los Congresos internacionales, de que España, cuyo derecho cambiario del siglo xvi contenía prácticas y observancias que se ofrecieron luego como novedades á mediados del siglo xix, patentice, como puede hacerlo, que no ha decaído, por fortuna, aquel alto espíritu de rectitud y de grandeza jurídica que revelan nuestros Códigos inmortales, y que tenemos dignos descendientes de aquellos insignes jurisconsultos y mercaderes que, anticipándose á su tiempo, honraron á su patria con la publicación del libro del Consulado del Mar, del Código de las costumbres de Tortosa, de las Ordenanzas de Bilbao y del Código de Comercio de 1829.

RAMÓN SÁNCHEZ DE OCAÑA.

Excmo. Sr. MINISTRO DE GRACIA Y JUSTICIA.  
Madrid 30 de Octubre de 1910.



## APPENDIX G. GENERAL PAPERS ON THE LAW OF BILLS OF EXCHANGE.

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### I. HISTORY OF THE LAW OF EXCHANGE.

[From *Loi Universelle sur le Change*, by Dr. Felix Meyer, counsellor at the Court of Appeals of Berlin.]

The first attempts made toward the unification of the law relative to bills of exchange soon followed, although cautiously, its division into a multiplicity of different laws. Indeed, during several centuries the law of exchange, as it had developed from the usages of Italian commerce, had been maintained in a position of universal use. It is only as a result of the development attained by the bill of exchange, thanks to the extension of indorsement beyond the banking world and outside of markets and fairs, that it was subjected by different legislative systems to regulations as numerous as they were varied.

Indeed, as the bill of exchange, thanks to its steadily growing facility of circulation, lost its character as a simple means of transferring money, was transformed into an instrument of credit, became an object of commerce, and rose in its international mission until it became a means of clearing for the settlement of international accounts, the obstacles and the difficulties resulting for its circulation from the differences which marked the laws in force became more obvious. In view of the character of the bill of exchange, it is easily understood that it tends essentially to the uniformity and the simplicity of the principles and the rules to which it is subjected. To the bill of exchange applies even more accurately what has been said of commerce in general—that its operations are essentially international and that conflicts of laws are not less detrimental than armed conflicts between States themselves.

But it was only in 1847 that this multiplicity of laws (felt especially in Germany, because there existed there not less than 56 different codes of rules on bills of exchange, established upon the most divergent bases) led to the creation of a uniform law. This end was attained upon the basis of the Prussian project of 1847 and as a result of deliberations which took place at Leipzig, and later at Nuremberg, between competent commercial and legal experts. The result was a single law, of which the text was promulgated in the different States as a national law, and which, from April 16, 1871, became a law of the German Empire, which proves in a striking manner the possibility of unifying the law. The German law on exchange was introduced into Alsace-Lorraine by a law of June 19, 1872, and into

Heligoland by an ordinance of March 22, 1891. The same legislation was promulgated in Austria on January 25, 1850.<sup>1</sup>

Some time after the desire to assimilate the laws on bills of exchange arose in England. The idea was taken up by two societies<sup>2</sup>—the National Association for the Promotion of Social Science of Lord Brougham, and especially by the society, founded in 1873, then called “Association for the Reform and Codification of the Laws of Nations,” and now called the International Law Association. At the time of the meetings at The Hague, at Bremen, at Antwerp, and at Frankfort on the Main, from 1875 to 1878, this body, in its resolutions known as the “Rules of Bremen,” furnished a basis for the thorough examination of this question. The work was resumed by the Legal Academy of Scientists, founded at Ghent in 1873, named the Institute of International Law, which has, in its meetings at Turin, Munich, and Brussels, from 1882 to 1885, prepared on bills of exchange a law destined to serve as a model to different States upon the basis of a project presented by Mr. César Norsa, doctor of laws and barrister at Milan.

During the interval the Government of Belgium also occupied itself with this question. It invited in 1884 Governments and interested circles of commerce and law to take part in a congress which would meet at Antwerp on the occasion of the Universal Exposition at Antwerp in 1885. It authorized a commission to prepare, upon the basis of the work of Dr. Norsa, a project of law which became the object of the deliberations of the delegates and was modified and completed at the second Congress of Commercial Law held at Brussels in 1888.

Another international conference on commercial law, again proposed in 1895 upon the initiative of the Belgian Government, failed to take place.

However, the legislators of the different States did not in the meantime remain idle. After Belgium, by her law of May 20, 1872, had modified upon several points the principles of her French code of commerce, which went back to the ordinance of 1673; after Hungary, Croatia, and Slavonia had framed a law on exchange, as article 17 of a law of 1876, the Scandinavian States—Denmark, Sweden, and Norway—reached an agreement to frame the law of May 7, 1880, which was identical for the three States, and is also applicable to the Faroe Islands and to Greenland, and whose material provisions were also put in force in Iceland by the law of January 13, 1882. Switzerland created her code of contracts on June 14, 1881, and Great Britain, at the instigation of the Institute of Bankers and the associated chambers of commerce, promulgated her law of August 16,

<sup>1</sup> The Austrian law of exchange departs from the German law only upon a few points of no importance. The essential difference between the two laws bears upon the promise of interest in the bill of exchange itself—a promise which, according to article 7 of the Austrian law, involves the invalidity of the bill of exchange as such, while by the terms of the German law this promise is considered as nonexistent. The conference of Nuremberg in 1857, which regulated in eight new resolutions certain divergences which had arisen in the application of the law, presented on this subject two alternative projects, of which one was accepted by Germany and the other by Austria. Goldschmidt, *Zeitschrift für das gesamte Handelsrecht*, I., p. 545.—Grunhut, *Wechselrecht*, I., p. 344, Rem. 20. The modifications introduced into the law by the conference of Nuremberg were given the force of law in Germany by decision of the confederation of June 23, 1862. When the German law of exchange is spoken of therefore it is to be understood that the Austrian law is included.

<sup>2</sup> Vide Cohn, *Beiträge zur Lehre vom einheitlichen Wechselrecht*, p. 25 et seq.; Cohn, *Conférences*, p. 106 seq.

1882, on bills of exchange—a law which is applicable to the four Norman Islands—Guernsey, Jersey, Alderney, and Stark—as well as to the Isle of Man, and finally to the neighboring islands which are a part of the United Kingdom, including the islands of Orkney and Shetland. By the decree of 1884 the aforesaid law was also introduced into Gibraltar. In the island of Malta, on the contrary, there still exists, by virtue of ordinance No. 13 of October 2, 1857, a special law on exchange.

More recent commercial laws, concerning also the matter which interests us, have been promulgated in Italy, April 2, 1882; in Spain, October 16, 1885; in Roumania, April 6–18, 1887; in Portugal, June 28, 1888; in Bulgaria, May 18–30, 1897; and in Japan in 1899.<sup>1</sup>

Russia fixed her law in regard to bills of exchange by a law of May 27 to June 9, 1902, applicable to the entire Empire except Finland, which is still subject to the law of March 29, 1858, and Poland, an imperial territory, where the code of commerce of 1807 still reigns without modification.

In the United States of America, the conference of Detroit authorized the committee on commercial law to prepare a law on bills of exchange in harmony with the legislation of England. In the following year, at the conference at Saratoga, the project prepared by this committee was approved and acquired the force of law at once in New York in 1897. Since then the project has been adopted with very slight modifications by 27 States enumerated as follows:

In 1897, by Colorado, Connecticut, and Florida; in 1897–98, by Virginia; in 1898–99, by Massachusetts, Maryland, the District of Columbia, North Carolina, North Dakota, Oregon, Rhode Island, Tennessee, Washington, Wisconsin, and Utah; in 1901, by Arizona and Pennsylvania; in 1902, by Iowa, New Jersey, and Ohio; in 1903, by Idaho and Montana; in 1904, by Kentucky and Louisiana; in 1905, by Kansas, Michigan, Missouri, Nebraska, and Wyoming.

It is anticipated that the project will be adopted very soon in the other 20 States of the Union.

It is to be recalled also that since 1886, the Netherlands have had under consideration a project regulating the subject of bills of exchange, which has not yet however, acquired the force of law:

At the congresses and assemblies of jurists<sup>2</sup> which were held between 1870 and 1888, there was also much discussion of the same questions, but there has been since then a pause.

It is only recently that the question which occupies us to-day has been brought to the front, thanks to comparative legislation—that younger sister of the science of the law, whose object consists in leveling, by comparing them, the differences which separate different legislations. It was examined at the International Congress of Comparative Law which was held at Paris at the time of the Universal

<sup>1</sup> In 1882 Japan promulgated a new law on exchange. It was first modified on July 1, 1893, and promulgated under its present form on June 16, 1899. It is not possible to enter here into more detail in regard to the legislation of South America and Central America. It will suffice to remark that Venezuela has possessed a new code of commerce since April 19, 1904, and Peru since July 1, 1902. The Argentine Republic reformed its code on September 10, 1862, and promulgated it under a new form on October 5, 1889. The provisions relative to exchange remained the same. In other States the old codes are still in force, and even in Brazil the code of commerce of June 25, 1850, has not ceased to have the force of law.

<sup>2</sup> Such as the assembly of jurists of 1870 in Hungary; that of 1870 for the northern countries; that of 1880 in Holland; and the fourteenth and fifteenth assemblies of the jurists of Germany.

Exposition of 1900.<sup>1</sup> It was touched upon anew at the forty-second annual assembly of the Society of Swiss Jurists, held in 1904 at Chaux-de-Fonds, at the time of the deliberations on the reform of the laws relative to exchange.

It is gratifying to recognize to-day that it is the commercial world which has once more found a means of calling the attention of the public to this question of such general interest. It was the Chamber of Commerce of Verona which, through a report by the Chevalier Cerutti, barrister, submitted it for examination by the International Congress of Chambers of Commerce and Commercial and Industrial Associations on the occasion of the Universal Exposition at Liege in 1905. This assembly put it on the program of the Congress of Milan. It would seem—a remark which has been made before—that the universal expositions, which draw together the representatives of commerce and industry and at which are felt in the strongest manner on the one hand the differences of legislations and on the other the solidarity of the commercial and industrial world, offer the most favorable field to the extension and the development of the ideas for the unification of the laws of exchange.

Although the conception so often set forth of a single and general law applying to the entire world may seem to be an Utopia, it is certain that in the domain, which is essentially a formal one, of the bill of exchange, whose origin is everywhere the same and which, when allowance is made for all special and national circumstances, is subject to general conditions which are always and everywhere the same for the commerce and industry of the entire world, the unification of the laws which govern this subject is not beyond the limits of things possible. Brocher, in speaking of the bill of exchange, says with reason:

Simple instrument of private or commercial transactions, free from all bonds which subject it to dependence upon moral, religious, or social ideas, the bill of exchange seems to raise only technical questions and to present a character of abstraction eminently fitted to favor unity.<sup>2</sup>

It can not be concealed, certainly, that in the absence of a world-Areopagus the identity of laws, even when actually attained, is jeopardized by the diversity in their interpretation which is inevitable with judges of different races, guided by the principles of divergent civil laws. This disadvantage might disappear, however, at least in part, after a certain time, by means of an international agreement. It will suffice to recall here the statutes of Nuremberg, which were born from an international agreement and have by the application of a single law put an end to controversies of interpretation in the different States of Germany. In our day the conferences at The Hague are accomplishing a similar task upon the international field of civil law, of procedure, of laws on failures, and of private law. But all this, in view of the imperfection of human institutions, has an importance only secondary compared with the advantages which would be offered for the entire world by the unification of the laws of exchange.

<sup>1</sup> The sixth point of the program of the aforesaid congress bore upon the necessity in comparative law of studying the juridical and national doctrines on institutions—application to the bill of exchange—according to the bulletin of the Society of Comparative Legislation, vol. 29, p. 785 et seq. The "rapporteur" was E. Thaller, professor at the faculty of law at Paris.

<sup>2</sup> *Études sur la lettre de change au point de vue international*, par Ch. Brocher, dans la *Revue du Droit international*, 1874, pp. 5, 196.

Two means are offered for escaping from the present state of confusion. One might be contented with laying down rules serving to aid in the solution of conflicts between diverse legislations, and thus to suppress the numerous doubts which arise every time upon the law which should be applied. But the merchant, who is not able to familiarize himself with the law of foreign countries, would hardly find any advantages in knowing which law should be applied in this or that particular case, so much the more as it is not always possible for him to foresee at the moment of issuing or negotiating a bill of exchange through what country it may pass. It is for the realm of international private law that it ought to be reserved to lay down the rules of conflicts of law and thus to blaze the way to the unification of the laws on exchange.

Unity of legislation remains from every point of view the most practicable means. Before it is possible to form a decision on the method to be followed to accomplish this unification, it is necessary to ask if the contrasts of the laws now in force concerning bills of exchange do not rest upon an irreconcilable diversity of principles, since then the end proposed could be attained only by sacrificing one principle to another; while otherwise, the decision taken in one sense or another would not modify the essence of the system and would permit harmony to be attained more easily by considerations of a civil and political nature.

Among the laws in force concerning bills of exchange may be distinguished, apart from several intermediate varieties, three principal types—the German, the French, and the Anglo-American.

The German law, regarding the bill of exchange as independent of the transaction which forms its basis, transforms the obligation into an abstract promise to pay a certain sum. As a result, to assure its circulation, it subjects the document to a severe formalism, without favoring, nevertheless, the dishonest individual who was perfectly conscious at the time when he acquired the rights resulting from the bill that the document was at variance with the real state of things, or who would have discovered it if he had given the necessary attention. The French law, on the other hand, faithful to its tradition, persists in considering the relations which exist between the bill of exchange and the operation which is the cause of it. According to this law the bill of exchange is only the instrument by means of which the contract of exchange is carried out, although it also has abandoned the ancient theory, according to which the bill of exchange was only a contract made for the purpose of transporting a sum of money from one place to another.<sup>1</sup>

To the strict written obligation of the German law is opposed the theory of the contract by mutual consent (*contrat consensuel*), which at the close of the eighteenth century still dominated everywhere the regulation of bills of exchange, and which had succeeded in pervading the German law, where vanishing traces of it are still found.<sup>2</sup>

The Anglo-American group tends to mitigate narrow formalism, while preserving equity. It is obliged, consequently, to recur constantly to the basis of the transaction, the origin of the bill of ex-

<sup>1</sup> Cf. Cohn: *Beiträge zur Lehre vom einheitlichen Wechselrecht*, p. 38; v. Canstein, *Das Wechselrecht Österreichs*, p. 287; Spaing, *Französisches, Belgisches und Englisches Wechselrecht*, p. 3; Leist, *Der Wechselprotest*, p. 152.—*Traité de Droit commercial par Lyon-Caen et Renault*, IV, No. 84, p. 25.

<sup>2</sup> Cf. Lehmann, *Lehrbuch des deutschen Wechselrechts*, p. 110, par. 34.



change, although in principle it considers the latter as independent of the material facts which have given it birth. This appears especially in the solution given by this law to the question as to the juridical importance of the cover which the drawer has to furnish to the drawee. On this point Great Britain (except Scotland) and America support in substance the German conception.<sup>1</sup>

To the German group, besides Austria, are allied Finland, Italy, Switzerland, Hungary,<sup>2</sup> with Transylvania, Croatia and Slavonia, Bulgaria, Bosnia and Herzegovina (where the Austrian law on bills of exchange went into operation without essential modifications, November 1, 1883), Portugal, Roumania, Russia, and Japan. Among the States of South America, Peru and Venezuela<sup>3</sup> have, in their most recent codes of commerce adopted the German system. The Dutch plan already cited also deserves mention here. In Servia new legislation on bills of exchange is in preparation, similar to the German type, and it appears that even China, who is engaged at the present time in reforming her civil law, has published in part a new code of commerce conforming to the Japanese system, and at the same time to the German system.

Conforming in an absolute manner to the French type are the most recent laws on bills of exchange of those countries which have adopted almost word for word in this matter the French code of commerce—Luxemburg, Greece, Monaco, Turkey, Samos, and Crete, Poland, even the Dutch code of commerce of April 10, 1838, and Servia with her code of commerce of July 26, 1860—these last two, it is true, not without important modifications.<sup>4</sup> The same may be said of the Egyptian code of commerce of November 13, 1883, and of the older codes, with a Franco-Spanish inspiration, employed in South America, among which the Argentine code of commerce of October 5, 1889, merits special mention, since it has served as a model to other States of Spanish America.

The laws of Malta, of Belgium, and of Spain occupy an intermediate position. The first has more points of contact with the German than with the French law.<sup>5</sup>

<sup>1</sup>Although the Anglo-American laws on exchange approach more nearly the German than the French system, they can not be classed in the German group. The course of the examination will make this clear. Cf. Pappenheim dans *Goldschmidts Zeitschrift für das gesamte Handelsrecht*, T. 28, p. 547.—Riesser dans la *Zeitschrift für vergleichende Rechtswissenschaft*, VII, p. 26, note 6.

Spain, *Ibid.*, p. 5.—Bettelheim, *Das internationale Wechselrecht Österreichs*, p. 5.

Contra: Cohn *loc. cit.*, p. 38.

<sup>2</sup>The German law on exchange was promulgated in Hungary and in Croatia on January 25, 1850. In 1861 a return was made in the first of these countries to the Hungarian law of 1840, and the additional provisions of 1844; by a law of June 5, 1876, the new ordinance on exchange went into operation.

Cf. Goldschmidt, *Zeitschrift*, T. 5, p. 464.—Grunhut, *Wechselrecht*, T. 1, p. 263.

Cohn, *Zeitschrift für vergleichende Rechtswissenschaft*, T. 4, p. 5.—In Croatia and in Slavonia the German law on exchange has remained in force. In consequence of the law of unification of 1868 the new law on exchange, in conformity with the Hungarian law, was promulgated in 1877 in the Croatian tongue as the common law of the Hungarian-Croatian Parliament.

<sup>3</sup>Venezuela exacts the designation of the bill of exchange, ignores the clause to order, the mention of the value received, and the clause for remittance from place to place (art. 362), recognizes indorsement in blank (art. 373), excludes the theory of cover in the laws on exchange, and considers the promise of interest set forth in a bill as invalid (art. 365, par. 2), etc. It appears beyond doubt that the Italian law served as a model to the legislators of Peru and of Venezuela.

<sup>4</sup>Thus the Dutch law rejects the French theory on the question of cover. The holder of a protested bill has no right to the cover (art. 110). Holland, moreover, recognizes indorsement in blank (art. 136).

<sup>5</sup>Thus the holder of a protested bill of exchange has no right over the cover; in the case of a bill of exchange not accepted, the cover belongs to the assets of the party who has failed, and in case of a bill of exchange accepted it returns to the acceptor (Art. 117); on the other hand, the indication of the value furnished is necessary and not the designation "bill of exchange" nor the clause "to order" (Art. 106).

The question under what head should be put the Belgian legislation on bills of exchange of May 20, 1872, has given rise to warm controversies. In its exterior divisions and in certain of its provisions it follows the tendencies of the code of commerce. It has not, for example, separated the obligations arising from bills of exchange from the basis of the transaction resulting from cover, and it has made numerous breaches in the narrow and exclusive system of German formalism. On other essential points, as for example, for value received, and for indorsement in blank, it conforms to the German type.<sup>1</sup> It is almost the same with Spain, which not only indorses the theory of cover for the rights which the holder has against the drawer under the bill of exchange, but which, by requiring the mention of the value received, makes of the countervalue due by the purchaser to the drawer a part of the obligation, and at the same time gives more weight to considerations of equity, to the detriment of precision of form—as, for example, in the case of *vis major*—but which, on the contrary, attaches no importance to remittance from place to place nor to the clause to order, and permits indorsement in blank. The general impression which is left by the two systems of legislation last referred to is that they gravitate rather toward the French than the German system.

If we consider the respective domains of the different systems of Europe, according to territorial extent and the number of persons subject to them, we obtain the following tables:

## A. GERMAN GROUP.

Country.	Area in square kilometers.	Population.
Germany.....	540,743	60,605,183
Austria.....	300,008	27,240,797
Hungary.....	324,851	20,113,733
Bosnia and Herzegovina.....	51,028	1,737,000
Russia (Europe).....	4,889,062	105,650,900
Finland.....	373,604	2,857,038
Italy.....	286,682	33,603,595
Switzerland.....	41,324	3,327,336
Portugal.....	89,372	5,016,267
Roumania.....	131,353	6,392,273
Denmark, the Faroe Islands, and Greenland.....	232,739	2,555,133
Norway.....	321,477	2,299,827
Sweden.....	447,862	5,260,811
Bulgaria.....	96,345	3,744,283
Total.....	8,126,450	280,404,176

## B. FRENCH GROUP.

France.....	536,464.0	39,060,000
Greece.....	64,679.0	2,433,806
Luxemburg.....	2,586.0	236,543
Monaco.....	1.5	15,180
The Netherlands.....	33,078.6	5,509,659
Poland.....	127,319.0	10,607,300
Servia.....	48,303.0	2,676,989
Turkey.....	169,317.0	6,130,200
Samos.....	468.0	53,424
Crete.....	8,618.0	309,656
Total.....	990,834.1	67,032,757

<sup>1</sup> Cf. Pappenheim in Goldschmidt: *Zeitschrift*, Vol. XXVIII, p. 534. Blesser, *Zeitschrift für vergleichende Rechtswissenschaft*, Vol. VII.

C. ANGLO-AMERICAN GROUP.

Country.	Area in square kilo- meters.	Popula- tion.
Great Britain and Gibraltar.....	314,879	43,743,703

D. INTERMEDIATE GROUP.

Belgium.....	29,455	7,074,910
Spain, the Baleares, and Pityuses.....	497,244	18,249,110
Malta.....	323	213,736
Total.....	527,022	25,537,756

The laws on exchange have not yet been codified in Montenegro, nor in the little Republics of San Marino and Andorra.

Outside of Europe the domain regulated by the German law on exchange extends, as we have seen, to Japan, with an area of 417,412 square kilometers and a population of 50,853,590 souls, as well as to Peru, with a population of 4,559,550 souls for 1,043,900 square kilometers. To the French group should be added all of Central America and South America. The Anglo-American category is increased by the addition of the United States of America, with an area of 9,420,670 square kilometers and a population of 81,752,000 souls.<sup>1</sup>

The figures above given constitute a striking testimony in support of what we have said above—that in the whole of Europe existing tendencies are in favor of an obligation abstract and formal, as it is defined by the German legislation on the bill of exchange. We are, however, still far distant from unity, even in what concerns European legislation on this subject. Indeed, without going beyond the various European groups, differences are encountered whose scope is considerable in many particulars and which sometimes seem to impair the principles which have served as the basis of the various legislative systems.

<sup>1</sup> These figures are taken from the work of Otto Hubner, Tableaux géographiques et statistiques de tous les pays de la terre, édité par M. le Professeur von Juraschek, Edition de 1906.

## II.—THE NEW YORK AND ENGLISH LAW COMPARED.

### THE NEW YORK NEGOTIABLE-INSTRUMENTS LAW.

[By Sir Mackenzie Chalmers, K. C. B., C. S. I., read before the Institute of Bankers on Wednesday, Jan. 13, 1909.]

Nearly 30 years ago (March, 1881) I had the honor of reading before you a paper in which I suggested the desirability of attempting to codify the law relating to bills, notes, and checks. The law relating to these instruments was at that time embedded in 18 statutes, and about 2,600 decided cases. The latest American work of authority (Daniel on Negotiable Instruments), which referred to the English as well as the American decisions, cited more than 7,000 cases. In spite of this plethora of authorities, there were still several gaps in the law, as well as contentious points. The Institute of Bankers approved the idea of codification and, under instructions from them, I prepared a draft bill, using as the basis a digest of the law of bills of exchange, which I had published in 1878. The draft was carefully revised by a committee of your council, and the bill was introduced by Lord Avebury, your then president. The bill originally did not apply to Scotland, but it was extended to Scotland by the House of Lords, with a saving for two special Scottish rules, so that the act, when passed, applied to the whole of the United Kingdom. I dare say, with our present experience, if we did the work over again, we could do it better. But, on the whole, I think we may be satisfied with the result of our labors. The act has given rise to but little litigation. It settles with reasonable clearness most of the points which arise in ordinary business. I am aware that my friend Sir John Paget, in the new edition of his excellent book on banking, has called attention to various doubtful questions which still await solution, to the satisfaction of the lawyers, and to the discomfort of men of business. But no code can foresee every case that may arise, or provide against the eccentricities of individuals, or always answer the ever-recurrent question which of two innocent persons is to suffer for the fraud of some third party.

The act at any rate has had one gratifying and hardly hoped for result. Most of our Colonies have adopted it, with or without some small modifications to adapt it to local circumstances. With such cosmopolitan instruments as bills of exchange, it surely is a gain to have the same rules of law, stated in same words, not only for the United Kingdom, but for the dominions of the Crown beyond the seas.

This evening I wish to call your attention to the American statute, or, rather, statutes, codifying the law relating to negotiable instruments, and to compare them with the English bills of exchange act. If English men of business felt the want of a code, our American cousins felt it just 40 times more, for they have 40 different States with 40 independent systems of judicature. The decisions of the courts of one State are not binding authorities in any other State. Of course they are cited and considered, but they are not authoritative, and I am afraid the best of lawyers differ in their opinions as much as the best of doctors are said to do. Suppose, for example, a question arises as to the effect of the insertion of the name of a fictitious payee in a bill of exchange. It may be decided one way in New York State and in another way in the contiguous State of Connecticut. There is a further complication. If the bill in question is drawn in Connecticut on New York, the Federal courts have jurisdiction, and a third rule may be laid down, which is binding in interstate matters, but not, as I understand, on the various State courts. As a consequence of this state of affairs, reported cases in America increase and multiply like rabbits in Australia. No ordinary-sized house could contain a complete set of all the American law reports. Our American cousins are practical people, and they came to the conclusion that legislation must be resorted to in order to introduce something like uniformity. But there was a difficulty in their way. The law relating to bills of exchange is a matter for the various State legislatures and not for Congress, so that there was no possibility of getting a law which should apply throughout the Union. They therefore created a commission on uniform laws. The function of the commission was to draw up model

bills, or draft laws, and then to persuade the various State legislatures to enact these laws for their own territories as far as possible in identical terms.<sup>1</sup> The first subject taken up by the commission was that of negotiable instruments. The drafting of the measure was intrusted to the able hands of Mr. J. J. Crawford, of the New York bar, in association with a subcommittee of the commission, presided over by the late Judge Brewster, of Connecticut. The first State to adopt the new law was New York, in 1897. By 1901, 16 other States, including all the great New England mercantile States, had adopted it, and since then, I believe, some other States have followed suit. We may, then, take the New York negotiable-instruments law as the typical and standard law for discussion this evening.<sup>2</sup> In point of form it differs from our act. We deal first with the bill of exchange as the original and typical negotiable instrument, and then state the provisions specially applicable to checks and promissory notes. The New York law first collects all the provisions common to the three classes of instruments, and then deals separately with the special provisions applicable to bills, notes, and checks, respectively. I do not know that there is much to choose in point of convenience between the two methods of arrangement. Then the New York law is split up into many more sections. It contains 332 sections, while our act contains 100. This subdivision often makes for clearness, but, as you are aware, sections of acts have, in England, to be reduced in number as far as practicable for parliamentary reasons. Coming now to the substance of the New York law, most of its provisions correspond, word for word, with the provisions of the English act. We have the same rules laid down in the same terms. In a few cases the English rule is reenacted in shorter and sometimes simpler language. So far as the English and American rules correspond, there is no need for further comment. I propose this evening to direct your attention to the more salient points in which the New York law deliberately lays down a rule which departs from the English rule. In London and in New York we have two great business communities, both speaking the English language, and both owing allegiance to the English common law. They have so much in common in their business relations that when they agree to part company it must be of interest to inquire into the reason for divergence, and to consider which of the two rules is the sounder from a practical point of view.

To begin with we may note certain omissions in the New York law.

In the first place the New York law is confined to instruments which in their origin are negotiable. Nonnegotiable bills and notes are left to the mercy of the common law. In some States they are regarded as mere civil obligations, while in others the law relating to negotiable instruments is applied to them, so far as it can be applied, as is the case in England. Moreover the New York law sticks to common-law rule that an instrument to be negotiable must originally be made payable either to order or bearer (see sec. 20). Our act, as you know, treats a bill payable to C as in legal effect payable to C or order (sec. 8 (4)). But nonnegotiable bills and notes are not of much importance from a business point of view.

Secondly, the New York law omits the provisions of our section 72, which deals with the conflict of laws. I take it the reason of this omission is that such provisions would be beyond the powers of the State legislatures. Interstate or international matters would, I suppose, come within the province of the Federal Legislature. Similar reasons may, perhaps, account for the omission of provisions corresponding to our section 57, which deals with damages and re-exchange.

Thirdly, the New York law does not provide for the crossing of checks. There was a philosopher, whose name I forget, who said he could imagine a universe where two parallel straight lines might meet and inclose a space. Most English people would find it equally difficult to imagine a business community which could dispense with crossed checks. But the fact remains that crossed checks are a purely English institution. I can not find any trace of them either in America or on the Continent. The reason I can not tell. Perhaps some one here this evening may be able to suggest it.

Fourthly, I find no provision corresponding to section 60 of the bills of exchange act, which protects a banker who in good faith pays a check held under

<sup>1</sup> There is nothing new under the sun. A similar plan was adopted before the unification of Germany. A draft law, i. e., the German general exchange law, 1849, was prepared, and then it was enacted in each of the constituent States of the Zollverein, with or without slight modification, by what were known as introductory laws.

<sup>2</sup> Mr. Crawford has published a useful edition of the New York law, in which he points out the slight modifications made by the different States when enacting the law for their own territories.



a forged indorsement. As bankers you will appreciate the importance of this omission.

We now come to the positive provisions of the New York law in which it differs from our act.

(1) New York law, section 21 (5), which corresponds generally with section 9 of our act, further provides that a bill or note is not to be invalid because it is to be paid "with costs of collection, or an attorney's fee in case payment shall not be made at maturity." This settles a question which was much in dispute in the States, but is not, I think, of much importance from an English point of view.

(2) New York law, section 24 (4), expressly validates instruments which "give the holders an election to require something to be done in lieu of payment of money," e. g., to take payment in money or in corporation stock at his option. This seems a lax rule, but it is defended on the ground that as the holder, and not the payor, has the option, the rule that a negotiable instrument must be payable in money is not infringed.

(3) Section 7 (3) of the English act, which provides that where a payee is a fictitious or nonexisting person the bill may be treated as payable to bearer, has given rise to some troublesome litigation, but this litigation need not be on the conscience of the Institute of Bankers, because the subsection was an amendment introduced in committee in the House of Commons.

Section 28 of the New York negotiable-instrument law reproduces this provision in an amended form and provides that the instrument is payable to bearer "when it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable, or when the name of the payee does not purport to be the name of any person." The latter words are evidently meant to provide for the case of a check which is drawn and payable to "cash or order," or to "sundries or order."

(4) Section 36 of the New York negotiable-instruments law somewhat expands the English provision and provides that where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by words is the sum payable, but if the words are ambiguous or uncertain references may be had to the figures to fix the amount.

It further provides that where there is a conflict between the written and printed provisions of the instrument the written provisions prevail. This is an ordinary rule of construction and would doubtless be followed in England.

(5) Section 26 of the English act deals with the question of an agent signing a bill or note as agent for a disclosed principal. If the agent signs without authority he is not liable on the instrument, though he may be liable in an action for false representations or on the implied warranty of authority. The New York law, section 39, has introduced a new rule. It provides that "where the instrument contains or the person adds to his signature words indicating that he signs for or on behalf of a principal or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent or as filling a representative character without disclosing his principal does not exempt him from personal liability." I am not sure that this is a convenient rule. There must always be a difficulty in determining whether the action should be brought against the principal or against the agent and there may be a difference in the damages where the agent who exceeds his authority acts fraudulently and where he acts in good faith.

(6) Section 15 of the English act provides that the drawer of a bill or any indorser may insert therein an express stipulation negating or limiting his own liability to the holder. The New York law, section 68, deals with this question in a somewhat different manner, and designates such indorsements as qualified indorsements. It provides as follows:

"A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words 'without recourse,' or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument."

This is rather more explicit than our provision, but practically comes to the same thing.

It is further to be noted that section 115 of New York law expressly determines a point which I do not think has ever been decided in England. It provides that an indorser "without recourse," or in other similar terms, is exactly on the same footing as a person who transfers an instrument payable to bearer by mere delivery, as to which see section 58 (3) of the English act.

(7) New York negotiable-instruments law, section 54, deals with the effect of want of consideration. It provides that absence or failure of consideration is a matter of defense as against any person not a holder in due course, and partial failure of consideration is a defense pro tanto whether the failure is an ascertained and liquidated amount or otherwise.

This, perhaps, is a convenient rule, but I think it would still be held in England, as formerly in the States, that in case of failure of an unliquidated part of the consideration the defense could only be raised by way of counterclaim. (See Daniel on Negotiable Instruments, sec. 210.)

(8) New York negotiable-instruments law, section 70, sticks to the English common-law rule and provides that where an instrument payable to bearer is indorsed specially it may nevertheless be further negotiated by delivery, but the person indorsing specially is liable as indorser only to such holders as make title through his indorsement.

As you are aware, section 8 (3) of the English act alters the common-law rule by providing that a bill is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

(9) New York negotiable-instruments law, section 72, enacts a rule which was well established in the States, but which we should regard as a lax one. It provides that "where an instrument is drawn or indorsed to a person as 'cashier' or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or by the indorsement of the officer."

(10) Section 56 of the English act provides that where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course. This provision is amplified by sections 113 and 114 of the New York law, which provide as follows:

"Sec. 113. A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor is deemed to be an indorser unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

"Sec. 114. Where a person not otherwise a party to an instrument places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

"(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

"(2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

"(3) If he signs for the accommodation of the payee he is liable to all parties subsequent to the payee."

It may be noted that this provision would have saved some recent litigation in England, but on the other hand, would have decided the point in issue in a different way. (See *Glenie v. Bruce Smith*, 1908, 1 K. B., 263.)

(11) New York law, section 118, deals with the order in which indorsers are liable. It provides that "as respects one another, indorsers are liable prima facie in the order in which they indorse, but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsers who indorse are deemed to indorse jointly and severally."

I do not know the object of the last sentence, which is an alteration of the previous American law. (See Daniel on Negotiable Instruments, sec. 704.)

(12) Section 52 (1) of the English act provides that when a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable. This provision is elaborated by section 130 of the New York law, which provides that "presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument, by its terms, is payable at a special place and he is able and willing to pay it there at maturity, and has funds there available for that purpose, such liability and willingness are equivalent to a tender of payment on his part."

Mr. Crawford comments on the superfluous words "and has funds there available for that purpose," and says:

"The interpolation is not only at variance with the provisions on the subject, but is contrary to good sense and to the practice of the business world. The change was made upon the suggestion of the commissioners of statutory revision without the knowledge of the commissioners on uniformity of laws. It affords a good illustration of the absurdity likely to result from legislative 'tinkering.'"

(13) Section 45 (3) of the English act provides that a bill must be presented for payment at a reasonable hour. The New York law, section 135, elaborates this provision in the case of banks and provides that in cases where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

(14) New York negotiable instruments law, section 137, deals specifically with the case of presentment of payment to partners, and provides that where the persons primarily liable on the instruments are liable as partners and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

This seems a useful provision, and corresponds with an unreported case as to notice of dishonor which was recently decided by Mr. Justice Channell.

(15) New York negotiable instruments law, section 145, abolishes days of grace, and provides that every negotiable instrument is payable at the time fixed therein without grace.

Mr. Crawford, writing in 1902, mentions that days of grace have been abolished in the following States: California, Idaho, Illinois, Maine, Montana, New Jersey, and Vermont. In Massachusetts, curiously enough, days of grace have been restored in the case of bills payable at sight. In the year 1881 the Institute of Bankers unanimously passed a resolution recommending the abolition of days of grace. An amendment to the bills of exchange bill to give effect to this resolution was brought forward in the House of Commons in 1882, but it was successfully resisted on the ground that, in certain trades, retail traders were accustomed to pay for goods supplied to them by wholesale traders by bills payable one month after date, and that it would be a great hardship on these small people to deprive them of three days' extra credit. I do not know how far similar conditions now prevail in these retail trades, and at any rate I should have thought that if much importance is attached to the extra three days' credit it would be easy to draw bills at thirty-three days after date. This would have the further advantage of getting rid of the inequality of the calendar months. As far as I am aware all the continental nations now have got rid of days of grace, and it seems to me that the law would be simplified if we were to make bills payable according to their tenor.

(16) New York negotiable instruments law, section 145, deals further with the question of holidays, and provides that when the day of maturity falls on a Sunday or a holiday the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on a Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before 12 o'clock noon on Saturday when that entire day is not a holiday.

Our act, as you will remember, draws a distinction between bills payable on statutory and common-law holidays. I should have thought a uniform rule was more convenient, but that is a practical question for business men which you know more about than I do.

(17) New York negotiable instruments law, section 147, deals with the question of acceptance of bills made payable at a bank. It provides that where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

I am not quite sure if I follow the object of this provision. It may possibly impose a duty on bankers to pay such instruments without previous agreement with their customers.

(18) New York negotiable instruments law, section 170, deals with the question of notice of dishonor to partners. It provides that where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution. This seems to have been Mr. Justice Channell's opinion in a recent unreported decision.

New York negotiable instruments law, sections 173 and 174, deal with the question of within what time notice of dishonor must be given. They are in substantial accord with our laws, but are a little stricter in terms.

As regards posting notices, section 177 provides that notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter box under the control of the Post Office Department.

(19) As you are aware, under English law, the acceptance of a bill must be written on the instrument itself, but the New York law departs somewhat

from this wholesome rule. It provides that where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it was shown and who, on the faith thereof receives the bill for value. An unconditional promise in writing to accept the bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value. (See secs. 222 and 223.)

(20) New York law, section 225, sanctions another lax rule. It provides that where a "drawee to whom a bill is delivered for acceptance destroys the same or refuses within 24 hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same." The destruction of a bill is just the opposite to accepting it. It is a wrongful act for which the drawee is responsible, and it seems to me that this fiction of the New York law can only give rise to difficulties.

(21) New York negotiable instruments law, section 224, provides that the drawee is allowed 24 hours after presentment in which to decide whether or not he will accept the bill. This no doubt is the rule, as commonly stated in the cases, but when the English act was under consideration the committee shied at this precise determination by statute, and substituted the "customary time" for 24 hours. I think the somewhat elastic English rule is probably the more convenient one.

(22) New York negotiable instruments law, section 322, reproduces provisions of section 74 of the English act in decidedly simpler form. It provides that a "check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay."

(23) In England, under the bank charter acts, the acceptance of a check by a bank would, in general, be an infringement of the privileges of the Bank of England. No such difficulty arises in the United States.

New York law, sections 323 and 324 deal with the certification of checks and provide as follows:

"Sec. 323. Where the check is certified by a bank on which it is drawn, the certification is equivalent to acceptance.

"Sec. 324. Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon."

As you are aware, the effect of marking checks for payment in England is by no means clear, as will be shown by a reference to Sir John Paget's book on banking, second edition, page 91.

(24) The New York negotiable instruments law, section 330, deals with negotiable instruments given for patent rights, and requires that the instrument should show on the face of it that it is given for a patent right. This provision is hardly of interest to us in England, nor is the succeeding section, which deals with negotiable instruments given for the purchase price of farm products at a price greater than the fair market value.

(25) New York negotiable instruments law, section 332, deals with the restriction of the negotiability of corporate or municipal bonds. It provides as follows:

"The owner or holder of any corporate or municipal bond or obligation (except such as are designated to circulate as money, payable to bearer), heretofore or hereafter issued in and payable in this State, but not registered in pursuance of any State law, may make such bond or obligation, or the interest coupon accompanying the same, nonnegotiable, by subscribing his name to a statement indorsed thereon that such bond, obligation, or coupon is his property; and thereon the principal sum therein mentioned is payable only to such owner or holder, or his legal representatives or assigns, unless such bond, obligation, or coupon be transferred by indorsement in blank, or payable to bearer, or to order, with the addition of the assignor's place of residence."

I think I have now called your attention to the main points in which the New York law differs from our act. We are a long way from Lord Mansfield's ideal of a law merchant, which should be uniform throughout the mercantile world. But as regards negotiable instruments, we may, I think, be well satisfied with the fairly substantial agreement in the laws of the English-speaking races. The Bremen and Budapest international conferences have passed a series of resolutions which, if adopted, would bring the English and continental rules more closely into accord. Anything which makes for unity of law in mercantile matters is strongly to be commended, but I hope we shall be very chary in accepting any change in English law which would bring it into discord with the laws of our Colonies and the United States.

**III.—DRAFT OF LAW CONCERNING THE BILL OF EXCHANGE UNANIMOUSLY VOTED BY THE CONGRESS OF BRUSSELS (1888).**

[This draft is communicated to the conference for information, in compliance with the request of the delegates for Belgium.]

**TITLE THE FIRST.—PROVISIONS APPLYING TO ALL NEGOTIABLE INSTRUMENTS.**

*Article 1.*

Whoever is capable of laying himself under an obligation of either a civil or a commercial character is capable of binding himself by a bill of exchange or a promissory note.

*Article 2.*

A foreigner who is not capable of binding himself by a bill of exchange or a promissory note by virtue of the law of his country, but is capable according to the law of the country in which he affixes his signature to the bill or promissory note, is not entitled to invoke his incapacity in order to be discharged of his obligations.

*Article 3.*

The obligations growing out of bills of exchange and promissory notes are independent and personal. A signature is binding respecting the obligation it involves, without regard to the nullity of any other obligation or to the forgery of any other signature.

**TITLE THE SECOND.—BILLS OF EXCHANGE.**

**Paragraph 1. Character of the bill of exchange.**

*Article 4.*

The bill of exchange is an unconditional order to pay, which must contain—

1. The designation of the amount to be paid.
2. The name of the person who is to pay.
3. The designation that it must be paid to a third party or that it is payable to order or to bearer.
4. The signature of the person who issues it.

The designation as “bill of exchange,” unless otherwise stated, is equivalent to the clause “to order”

*Article 5.*

The document lacking one of the conditions stated by the preceding article shall have no validity under the law of exchange.



*Article 6.*

The owner of a bill issued as payable to bearer has always the right to affix to it the clause "to order;" by virtue of this clause the bill shall be transferable only through an indorsement.

*Article 7.*

The bill of exchange must be dated and indicate the time and place of payment.

If a bill of exchange is not dated, the bearer is presumed to have been given authority to insert the date. If it does not state the time of payment, it shall be payable at sight. If it does not state the place, it shall be payable at the domicile of the drawee.

If a bill of exchange is drawn in a set, this must be stated on it, under penalty of costs and damages against the drawer.

*Article 8.*

When the amount to be paid is written in words and figures, in case of divergence the amount expressed in words shall prevail.

Paragraph 2. Acceptance.

*Article 9.*

The holder of a bill of exchange has the right to demand at any time its acceptance; any clause to the contrary shall be considered as null.

*Article 10.*

Presentation for acceptance or for visé is compulsory only with regard to bills payable at a certain date from sight.

The holder of a bill payable at so many days' sight must, under penalty of losing his right of recourse, present it for acceptance or visé within the time stated by the bill, or, for want of designation, within four months running from its date if the bill is drawn from the same continent, and within eight months from its date if it is drawn from another continent.

*Article 11.*

The obligation of the bearer to present the bill for acceptance or visé to the referee in case of need is restricted to the case when the latter has his domicile in the same place as the drawee.

*Article 12.*

Acceptance must be written on the bill. A mere signature on the face of the bill by the drawee is equivalent to acceptance.

Acceptance by a separate deed has no validity under the law of exchange.

*Article 13.*

Acceptance may be required to be given within 24 hours; it shall not be conditional, but may be restricted in respect of the amount accepted.

The drawee may cancel his acceptance as long as he has not parted with the bill, unless he holds it only as attorney or trustee.

*Article 14.*

When the bill is payable at a certain delay from sight, the acceptance or visa must be dated by the person who gives it, in default of which the bearer is presumed to have been given authority to insert the date.

*Article 15.*

When the bill is payable in a place other than the domicile of the drawee, the latter must, in the absence of designation in the bill, designate the place where payment shall be made.

*Article 16.*

Refusal of acceptance must be noted at the drawee's domicile by an act called protest for nonacceptance.

*Article 17.*

Notice of protest for nonacceptance makes the indorsers and the drawer, respectively, liable for the payment of the amount of the bill, including the cost of protest and other reasonable expenses, less discount.

*Article 18.*

The right to exercise recourse, as provided by the preceding article, in favor of the holder, belongs also to any indorser holding a protested bill.

Paragraph 3. Indorsement.

*Article 19.*

The indorsement transfers the ownership of the bill.

*Article 20.*

The mere signature of the holder, placed upon the back of the bill, upon the copy, or upon the addition to the bill, has the force of an indorsement.

*Article 21.*

The indorsement must be dated; if it is not dated, the bearer shall be deemed to have been given authority to insert the date.

*Article 22.*

Restrictive provisions added to the indorsement by an indorser may be invoked against all subsequent owners of the bill and may be

availed of by them, subject, however, to the provisions of article 43, concerning the clause "return without costs."

*Article 23.*

If the bill has been indorsed to the drawer, to a previous indorser, or even to the acceptor, and if it has been again indorsed by them before maturity, all the indorsers remain bound toward the holder.

Paragraph 4. Guaranty.

*Article 24.*

A guaranty may be given as security for the payment of a bill. The guarantor (donneur d'aval) is bound jointly with the party he guarantees. He guarantees the obligations of the acceptor, and, in default of acceptance, those of the drawer, unless he has restricted his responsibility to the guaranty of the obligations of one or more of the indorsers.

*Article 25.*

The guaranty must be written on the bill.

The guaranty given by separate deed has no validity under the law of exchange.

*Article 26.*

The mere signature of a third party placed on the face of the bill has the force of a guaranty.

Paragraph 5. Maturity and payment.

*Article 27.*

The bearer of a bill of exchange must present it for payment on the day of maturity. If this day is a holiday, presentation must take place on the first preceding business day.

When the bill of exchange is payable at sight, it must, in default of a special designation, be presented to the drawee within four months from its date if it is drawn from the same continent, or within eight months if it is drawn from another continent.

If the bill indicates a case of need it should be presented to the referee only when he is domiciled in the place where the bill is payable.

*Article 28.*

If the bill indicates that it is payable at so many days from date, and if this date has been omitted, or if the acceptance of a bill drawn at so many days' sight is not dated, each holder shall be presumed to have been given authority to insert the real date of issue or acceptance.

*Article 29.*

A bill of exchange must be paid in the money which it prescribes.

If foreign money is in question the payment may be made in national money, at the average rate of exchange for sight drafts,

quoted on the day before maturity or payment in the banking place nearest the place of payment, unless the drawer has expressly prescribed payment in foreign money.

*Article 30.*

The holder of a bill has not the right to refuse a partial payment, even when acceptance has been given for the full amount of the bill.

*Article 31.*

The holder of a bill of exchange can not be compelled to receive payment before maturity.

The person paying a bill before maturity is liable for the validity of the payment.

*Article 32.*

Whoever pays a bill at maturity, without opposition, is presumed to be validly discharged.

Opposition to payment will be admitted only in case of loss of the bill, failure of the holder, or his incapacity to receive the payment.

*Article 33.*

If the payment of the bill is not demanded at maturity the acceptor may, after expiration of the time given for protest for non-payment, deposit the amount of the bill, at the risk and cost of the holder, in the public office authorized in each country to receive deposits and consignments, without being bound to summon the holder.

*Article 34.*

The debtor who pays the full amount of the bill of exchange has the right to require from the bearer the restitution of the bill with a discharge upon it.

If the debtor makes a partial payment, he is merely entitled to require that this payment be stated on the bill, and that a receipt for the amount paid be given to him on a copy of the bill.

*Article 35.*

If a bill of exchange is drawn in a set, the drawee shall not be discharged toward the bearer except by paying the draft bearing his acceptance.

If there has been no acceptance the drawee shall be discharged by paying the first draft regularly presented to him.

*Article 36.*

The courts shall not have the right to grant delays for the payment of a bill of exchange.

Paragraph 6. Protest.

*Article 37.*

Each country should determine here the provisions applying to the statement by the bearer of refusal to pay the full amount or a part of the amount of the bill.

*Article 38.*

In the absence of a provision stating the contrary in the law of the country where the bill is payable, protest must be made not later than the second business day following maturity.

Holidays are not to be taken into account in this delay.

*Article 39.*

The clause "without protest" or "without costs" exempts the holder from the obligation to protest the bill, but it does not deprive him of the right to have a protest made and to require reimbursement of its costs.

*Article 40.*

The clause "without protest" or "without costs" can be written in the bill only by the drawer; if it is not stated in the text of the bill, it must be at least indicated by a paraph.

Paragraph 7. Copies.

*Article 41.*

The copy of a bill of exchange must conform to the original draft and reproduce all the indorsements and designations it contains, with the statement that it is a copy.

*Article 42.*

An original indorsement made on a copy binds the indorser in the same manner as if made on the bill itself.

*Article 43.*

The holder of a bill of exchange is bound to deliver it to the holder of the copy when the latter has proved his rights to receive the original draft. If he refuses to do so, the holder of the copy is bound to have such refusal set forth by a deed of protest under penalty of losing his right of recourse against the indorsers who have placed their signatures on the copy.

The protest must state:

1. That the original draft has not been delivered by the holder.
2. That the acceptance or payment has not been secured on the exhibition of the copy.

Paragraph 8. Intervention.

1. Acceptance by intervention.

*Article 44.*

The bill of exchange may be accepted, for the full amount or in part, at the time of protest for nonacceptance, by a third party intervening in behalf of one of the signers.



Acceptance by intervention shall be made in the same form as the acceptance of the drawee. It must be, moreover, stated that on the act of protest or below the text of the latter.

*Article 45.*

When the person stated as referee in case of need consents to accept the bill in behalf of one of the parties, he shall be preferred to all other persons offering to intervene in behalf of the same party.

*Article 46.*

When the person intervening has omitted to state in his acceptance for whose behalf he intervenes, he shall be deemed to have done so on behalf of the drawer.

*Article 47.*

The person intervening is bound to give notice of his intervention without delay to the party for whom he intervenes.

*Article 48.*

The holder of the bill of exchange who has consented to acceptance by intervention is excluded from recourse grounded on the absence of acceptance.

2. Payment by intervention.

*Article 49.*

A protested bill of exchange may be paid by any third party intervening for one of the signers.

Both intervention and payment shall be stated in the act of protest or below the text of the latter.

*Article 50.*

If the holder refuses to receive the payment offered by the person making intervention, he shall be excluded from the right of recourse against the parties who would have been discharged by the payment.

*Article 51.*

Whoever pays a bill of exchange by intervention is subrogated to the rights of the holder against the person for whom he has intervened, against the guarantors of this person, and against the drawee; he is bound by the obligations devolving on the holder in respect of the formalities to be fulfilled.

*Article 52.*

If the payment by intervention is made for the drawer, all the indorsers are discharged.

If it is made for an indorser, all indorsers subsequent to him are discharged.

If there are several offers for payment of a bill of exchange by intervention, that which would lead to the greatest number of discharges shall be preferred.

If the referee in case of need consents to pay the bill, he shall be preferred to all third parties whose intervention would not involve a greater number of discharges.

Paragraph 9. Obligations and actions.

*Article 53.*

All the signers of a bill of exchange are liable jointly to the holder.

Their obligation extends to the amount of the bill, to the interest, to costs of protest, and to other reasonable expenses. Interest runs from maturity.

Reexchange may be cumulative.

*Article 54.*

The drawee who has paid or accepted a forged bill of exchange may require from the holder and from each indorser the designation of his predecessor and the proof of the genuineness of the latter's signature.

The holder of a bill who discovers that it has been forged shall have the same right.

*Article 55.*

The holder of a protested bill of exchange may exercise recourse against all the signers of the bill or against each separately.

Each indorser shall have the same right against the previous indorsers and against the drawer.

*Article 56.*

The time within which recourse must be exercised and the formalities to be observed in such an action shall be fixed by the law of the country where it is brought.

*Article 57.*

The holder of a bill is deprived of all his rights against the indorsers, except in case of vis major, after the expiration of the prescribed delays for the presentation of a bill payable at sight or at so many days' sight, for protest for nonpayment, or for the exercise of recourse.

The indorsers are similarly deprived of their right of recourse against their predecessors, according to their respective obligations.

*Article 58.*

The same limitation shall affect the holder and the indorsers in respect of the drawer; they shall retain only their right of recourse against the acceptor.

The drawer, however, shall remain bound in so far as he is unduly enriched to the prejudice of the holder or of the indorsers.

Paragraph 10. Loss of bills of exchange.

*Article 59.*

Each country should prescribe here the requirements with which the bearer should comply in order to obtain the payment of a lost bill of exchange.

*Article 60.*

The owner of a bill of exchange which has been mislaid must, in order to secure a new draft of it, apply to the previous indorser, who is bound to assist him in taking action against his own previous indorser, and so on, in succession, until the drawer is reached.

When the drawer shall have delivered a new draft, each indorser shall be bound to place his former indorsement on it.

The drawee who has already given his acceptance is not bound to place it on the new draft.

The owner of the lost bill shall bear the costs.

*Article 61.*

The owner of a lost bill of exchange may request from the courts at the place of payment that it be declared void.

The courts shall order publication to be made, so as to give notice to the holder of the bill that he must validate his rights within a fixed time, under penalty of seeing his bill declared null and void.

Each country should prescribe here the form of publication and the procedure to be followed in a suit for annulment.

Paragraph 11. Prescription.

*Article 62.*

All actions pertaining to bills of exchange shall be subject to a time limitation of five years, running from the last day available for making protest or from the day on which the last legal proceedings have been taken, unless a legal judgment has been given or the debt has been acknowledged by a separate act.

With respect to bills of exchange payable at sight, the maturity of which has not been fixed by presentation, the time limit shall run from the expiration of the delay prescribed by Article 10 for presentation to the drawee. With respect to bills payable at so many days' sight, the time limitation shall run from the expiration of the same delay with the addition of the delay after sight.

*Article 63.*

The time limitation for action of recourse by an indorser against previous indorsers and the drawer shall run from the day on which the indorser has paid, or, in case of legal action, from the day on which the subpoena has been issued.

*Article 64.*

In respect of bills of exchange, the time limitation shall run against minors and others without legal capacity.

**TITLE THE THIRD.—PROMISSORY NOTES PAYABLE TO ORDER AND TO BEARER.**

*Article 65.*

Notes to order and to bearer are obligations to pay containing—

1. The designation of the amount to be paid.
2. The statement that the note is to order or to bearer.
3. The signature of the party bound by virtue of the note.

*Article 66.*

All provisions concerning the bill of exchange shall also be applicable to the promissory note, either to bearer or to order, except such as are excluded by the character of such notes.

**TITLE THE FOURTH.—CHECKS AND OTHER NEGOTIABLE INSTRUMENTS.**

*Article 67.*

The provisions of the present law concerning the bill of exchange, payable at sight, shall apply to bills bearing the denomination of checks, credit bonds, or other similar designation, and issued for the withdrawal of available funds, subject to the following modifications:

1. The bearer of such a bill must present it for payment within five days from its date, when it is drawn from the place where it is to be paid; but when the bill is drawn from another place the time limitation shall be fixed by the laws of the country.

2. A bill bearing across its face two parallel lines shall be payable only through a bank; if a name is written between the two lines the bill must be paid at the bank thus indicated.

*Article 68.*

The preceding article shall not apply to sight drafts and bills—

1. Which bear the designation, "bills of exchange."
2. Which, according to the law or custom of the country in which they are issued, have necessarily the character of bills of exchange.

#### IV. DRAFT OF A UNIFORM LAW ON THE BILL OF EXCHANGE.

[Presented by the delegate of the Royal Government of Hungary in view of the draft framed by the Imperial Government of Germany.]

##### CHAPTER THE FIRST.—ISSUE OF THE BILL OF EXCHANGE.

###### *Article 1.—Essential conditions.*

The bill of exchange must contain—

1. Designation as a bill of exchange.
2. An unconditional order to pay a sum certain in money.
3. The name of the person who is to pay (the drawee).
4. The name of the person to whom payment must be made (the first holder).
5. Designation of the place of payment.
6. Designation of the place and date of issue.
7. The signature of the drawer.

###### *Article 2.—Clause concerning the bill of exchange.*

The designation as a bill of exchange must be written in the text itself of the document, and shall be expressed in the same language as is used in the document.

###### *Article 3.—Clause concerning interest.*

The drawer may stipulate in the bill of exchange that interest shall be paid upon its amount; this stipulation shall be considered as null if the rate of interest is not stated.

Unless otherwise stated by the drawer in the bill of exchange, the interest shall run from the date of issue.

###### *Article 4.—Divergences in amounts stated.*

If the amount of the bill of exchange is written in words and figures, in case of divergence the amount written in words shall prevail; if the amount is written several times in words or several times in figures, in case of divergence the smallest amount shall prevail.

###### *Article 5.—Designation of the first holder and of the drawee.*

The drawer may designate himself both as drawee and as first holder.

Several first holders or several drawees may be designated jointly or as substitutes for another. A public office or its occupant may also be designated as first holder.



*Article 6.—Maturity.*

The maturity must be the same for the whole amount of the bill of exchange.

It may be fixed only as follows: At a day certain; at a certain time after date; at sight (presentation, demand, etc.); or at a certain time after sight.

Bills of exchange payable according to usances or at a fair shall not be valid.

A bill of exchange which does not indicate the day of maturity shall be considered as payable at sight.

*Article 7.—Interpretation of the date of maturity.*

If the bill is stated as maturing at the beginning, the middle, or the end of the month, these terms shall be considered as applying respectively to the first, to the fifteenth, or to the last day of the month.

In case the designation of the year of maturity is not given, the bill shall be held to mature within the year of issue, unless on the day of issue the day and month stated for maturity have already elapsed, in which case the subsequent year shall be presumed to have been intended.

*Article 8.—Calculation of the delays.*

A bill of exchange payable at a certain time after date (or sight) shall mature:

1. If the delay is stated in days, on the last day of the delay, without taking into account the day on which the delay begins.

2. If the delay is stated in weeks, in months, or in a period comprising several months, on the day of the week or of the month of payment which corresponds with the day from which the delay runs; but in case this day is lacking in the month of payment the bill shall mature on the last day of the month of payment.

The term "half month" shall be interpreted as 15 days. In case the bill shall not have been issued for a period comprising only full months, the full months shall be reckoned first.

The foregoing provisions shall apply also to the other delays enumerated by the law of exchange.

*Article 9.—Differences of the calendars.*

Unless provided to the contrary by the drawer on the bill of exchange, the years and months of the delay, as well as the date of maturity, shall be interpreted according to the calendar used in the place of payment.

In case the calendar of the place of issue or of sight differs from that in use at the place of payment, the date of issue or of sight shall be, for bills of exchange maturing after a certain delay from date or from sight, adjusted to the corresponding date of the calendar in use at the place of payment, and the expiration of the delay shall run from the date thus obtained.

*Article 10.—Place of payment.*

The place stated next to the name of the drawer shall be considered as being both the place of payment and the domicile of the drawer, unless the bill specially designates another place for this purpose. If several places are designated, the first stated shall be considered as the place of payment.

*Article 11.—Conditions causing nullity.*

A document lacking one of the essential requirements shall not be considered a bill of exchange.

The statements contained in such a document shall have no validity under the law of exchange.

The parts of a document which have been unintentionally canceled by the holder, or by anybody having authority to do so, shall be considered as null, the intent being presumed.

*Article 12.—Competence for completing a bill of exchange.*

If at the time when a designation has been placed on the document, the latter did not contain one or several of the particulars prescribed as essential, or if a blank in a bill of exchange has been filled subsequently and arbitrarily, such objections shall not be raised against a third party who is a holder in good faith, but they may be raised against others when the defendant shall prove that the filling up of the bill thus subsequently made was in violation of a previous agreement.

*Article 13.—Void signatures.*

If a bill of exchange bears forged signatures, or signatures of persons incapable of obligating themselves by a bill of exchange, this fact shall have no effect on the validity of the other obligations.

*Article 14.—Declarations made by an unauthorized person.*

Whoever in a bill of exchange makes a declaration as representative of another person, without having power of attorney, shall be personally obligated in the same manner as the person alleged to have given power of attorney would have been if it had been actually given.

*Article 15.—Signature by means of a mark.*

The declarations borne upon a bill of exchange which are indicated by a mark or any other sign in place of a name, where the party does not know how to sign, shall be valid in matters of exchange only in the case where the mark or sign in question shall be duly authenticated by a tribunal or a notary.

*Article 16.—Forgery.*

If the tenor of a bill of exchange, or of one of its declarations, is altered by a forgery, persons who have signed previously to the

forgery shall be bound according to the original text, and subsequent signers according to the forged text.

An alteration which is invisible, made subsequently to the declarations, either in typewriting or written with a pencil, shall not be construed against a third party holding the bill in due course.

*Article 17.—Liability of the drawer.*

The drawer warrants the acceptance and the payment of a bill of exchange. He may, however, exclude this liability by a statement on the bill.

CHAPTER THE SECOND.—INDORSEMENT.

*Article 18.—Capacity to transfer.*

The first holder may transfer the bill of exchange to a third party by an indorsement, even if it has not been drawn "to order."

If the drawer has prohibited indorsement by the statement "Not to order," or any other equivalent words set forth on the bill, he may set up against all indorseees the objections he would have been entitled to make against the first holder, and is bound toward them only so far as he would have been bound toward the latter.

*Article 19.—Conditions respecting indorsement.*

The indorsement must be written on the bill of exchange or on a sheet attached to it (allonge), and be signed by the indorser.

*Article 20.—Indorsement in blank.*

An indorsement is valid even if the name of the indorsee is not stated, or if the indorser has written only his own name on the back of the bill or on the addition to the bill.

*Article 21.—Rights of the holder of a bill indorsed in blank.*

If a bill of exchange is indorsed in blank, the holder is entitled to set up the rights arising from the bill. He may also fill up the indorsement in blank in order to render it a full indorsement, or he may indorse the bill without filling it up and transfer it to some other person without indorsement.

*Article 22.—Partial indorsement.*

A partial indorsement shall not be valid.

Any condition added to the indorsement shall be considered null.

*Article 23.—Effects of indorsement.*

Indorsement transfers to the indorsee all the rights which arise from the bill of exchange, and especially the power to reindorse it.

A bill of exchange may also be indorsed to a party already liable upon it or to the drawee, who, in their turn, may reindorse it to others.

*Article 24.—Obligations of the indorsers.*

The indorser warrants toward each of the subsequent holders both the acceptance and the payment of the bill. He may, however, exclude this obligation by a statement written in the indorsement.

If, by a statement written in the indorsement, the indorser has prohibited the transfer of the bill, he shall have the right to set up against any subsequent indorsee all the exceptions he would have been entitled to make against his immediate indorsee, and he is bound in respect of them only as far as he is bound toward the latter.

*Article 25.—Indorsement by power of attorney.*

If the indorsement contains the provision "for collection," or "by power of attorney," or any other formula granting authority, the indorsee shall be entitled to set up, in the indorser's name, all the rights arising from the bill, and to transfer to other persons all such rights by a similar indorsement; but he shall not be entitled to make an indorsement transferring the ownership of the bill.

*Article 26.—Indorsement.*

Whoever indorses a bill protested for nonacceptance or for better security is, toward each subsequent holder who has acquired it knowing the defect to which it was subject, bound only to pay it at maturity. Any indorsement placed on a bill after the delay given for making protest for nonpayment has elapsed shall involve merely the transfer of the rights belonging to the indorser.

### CHAPTER THE THIRD.—PRESENTMENT FOR ACCEPTANCE; SIGHT; ACCEPTANCE.

*Article 27.—Place and time of presentation for acceptance.*

The holder has the right up to the date of maturity to present the bill to the drawee for acceptance. This right may be excluded or subjected to a time limit by a statement of the drawer.

Presentment must be made at the domicile stated on the bill, or in default of such a statement, at the actual domicile of the drawee.

The mere possession of the bill shall entitle the holder to present it for acceptance and to make protest for nonacceptance.

*Article 28.—Obligation to present.*

The drawer may prescribe that the bill of exchange must be presented for acceptance. He may also prescribe that presentment must be made within a stated time. If such a prescription is not complied with the obligation of the drawer and of the indorsers is extinguished. If an indorsement provides a special delay in presentment the obligation of the indorser is extinguished in case this requirement is not observed. Presentment in due time must be set forth by a dated acceptance, or, if the drawee refuses either to give acceptance or to date it, by a protest made within the delay given for presentation.

The protest must be drawn within twenty-four hours after presentment. It may, however, be drawn immediately in case of simple and direct refusal to accept or on the last day of delay in case of presentment followed by refusal.

*Article 29.—Presentation for “visa.”*

A bill of exchange drawn at a certain time after sight must be presented to the drawee within a delay of six months reckoned from its issue, and in the place where it should be presented for acceptance; the drawer is, however, entitled to provide in the bill for a different delay. If the time limit given for presentment is not observed the obligation of the drawer and of the indorsers is extinguished. If an indorsement states a special delay for presentment the obligation of the indorser is extinguished in case this delay is not observed.

Presentment for visé is included in presentment for acceptance, the dated acceptance in this case taking the place of the notice of sight (mention de vue).

*Article 30.—Use of different calendars.*

When a bill of exchange is issued at a certain time after sight, in a place where the calendar differs from the calendar used in the place of presentment, the day of issue shall, unless otherwise provided by the drawer, be adjusted to the calendar used in the place of presentation, and the limit of the delay granted for presentment shall be fixed in accordance with this calculation.

*Article 31.—Visé.*

Presentment in due time must be stated by a notice of sight (mention de vue) written on the bill, signed and dated by the drawee, or by a protest made within the delay of presentment if the drawee refuses to write said notice on the bill. In the latter case the day of protest shall be considered as the day of presentment. Possession of the bill of exchange gives to the holder authority for presenting the bill or for making protest for absence of notice of sight.

*Article 32.—Undated acceptance.*

If a bill of exchange drawn a certain time after sight bears an undated acceptance, and if protest has not been made for absence of date of acceptance, or for absence of visé, the maturity of the bill of exchange shall be calculated from the last day of the delay of presentment fixed by the drawer, or, in default of such a statement, from the last day of the legal delay of presentment.

*Article 33.—Form of the acceptance.*

The acceptance of a bill of exchange must be made in writing and written on the bill itself.

A declaration written on the bill and signed by the drawee is considered as an unrestricted acceptance, unless it states explicitly that



the drawee refuses to accept or accepts only subject to certain restrictions.

It shall be considered an unrestricted acceptance also if the drawee's name is written without any other indication on the face of the bill.

• *Article 34.—Restricted acceptance.*

The drawee may restrict his acceptance to a part of the amount stated on the bill. Any other restriction shall be considered as an absolute refusal of acceptance; but the acceptor shall be bound according to the tenor of his declaration.

*Article 35.—Domiciled bill.*

If the drawer has stated in the bill a place of payment different from the domicile of the drawee, without having, however, designated the person charged with payment in his place, he may at the time of the acceptance state the person charged with the payment.

In case the bill of exchange is payable at his domicile the drawee may designate another place in the same locality.

*Article 36.—Cancellation of acceptance.*

The acceptor has the right to cancel his acceptance, so long as he has neither parted with the bill nor given written notice of his acceptance to the person by whom or for whom the bill has been presented.

*Article 37.—Obligation of the acceptor.*

By his acceptance the drawee binds himself to pay the accepted amount.

This obligation is valid even toward the drawer.

CHAPTER THE FOURTH.—PAYMENT.

*Article 38.—Right of presentment.*

The holder may require the payment of the bill of exchange on the day of maturity.

Days of grace shall not be admitted.

*Article 39.—Place of presentment for payment.*

The bill of exchange must be presented for payment in the place of payment, and to the drawee, to the acceptor, or to any other person charged with the payment.

The remittance of a bill of exchange to a clearing house located in the place of payment, and with which the person to whom the bill ought to be presented is affiliated, is equivalent to presentment for payment.

The laws of the country where presentment should take place shall prescribe what offices shall be considered as clearing houses.

*Article 40.—Nonpresentation.*

If the bill of exchange is not presented, in accordance with the preceding article, at least on the second business day following the day on which it matures, the obligation of the drawer and of the indorsers is extinguished.

If the bill has been duly protested previous to its maturity, for nonacceptance or for better security, presentment for payment shall not be compulsory for preservation of recourse against persons who signed the bill before protest was made; nor is it necessary to present the bill in order to maintain the right of recourse against the acceptor.

*Article 41.—Delay in presentation of a sight draft.*

A bill of exchange drawn at sight must be presented for payment within a delay of six months from its issue; but the drawer may state any other delay on the bill. If the time for presentment has expired, the obligation of the drawer and of the indorsers shall be extinguished. When an indorsement provides a special delay for presentment, the obligation shall be extinguished if this provision is not complied with.

*Article 42.—Presentation for better security.*

If the drawee, the acceptor, or, for a nonacceptable bill, the drawee, fails, becomes insolvent, or suspends payment, the holder may present the bill to the drawee or to the acceptor for payment, and in case of dishonor have the fact stated by protest for better security.

In this case the holder has the right to exercise immediately a recourse against all the parties bound by the bill.

The laws of the State in which the insolvent, or person who has suspended payment, is domiciled shall determine the time at which the insolvency or the suspension have become effective and the manner in which they are established.

*Article 43.—Payment before maturity.*

The holder is not bound to accept from the drawee or from the acceptor payment of a bill before maturity, unless the acceptor has stipulated in his acceptance for payment before maturity.

*Article 44.—Partial payment.*

Under penalty of losing his right of recourse for a corresponding amount, the holder shall not refuse a partial payment from the drawee or from the acceptor on the day of maturity or during the delay given for protest.

*Article 45.—Total amount of the payment.*

The payment must include the amount of the bill, the matured interest stipulated in the bill, and, in case a protest has been considered necessary, a compensation of one-quarter per cent, calculated on the

amount of the bill (commission), as well as the costs arising from the protest.

It is not necessary to make a protest for nonpayment in order to give validity to a debt pertaining to a bill of exchange against the acceptor, his warrantors, or guarantors.

The drawee, the acceptor, or the person who is to pay for him shall not be bound to pay unless the bill is delivered to them, with a receipt on it, and the protest, if any has been made.

If the drawee or acceptor has made a partial payment he may require that the amount paid shall be deducted from the amount of the bill and that a receipt for it shall be given to him.

*Article 46.—Foreign money.*

When a bill is expressed in a money which has not legal circulation in the place of payment, unless the drawer has explicitly stipulated in the bill the money which shall be used for payment, the amount of the bill shall be paid, according to its value at the time of maturity, in money having legal circulation in the country.

The rate of exchange shall be calculated according to the last quotation applying to sight drafts recorded on the day previous to the day of maturity on the exchange with which the place of payment is related.

If the rate of exchange has been indicated by the drawer in the bill itself, or can be determined in accordance with authority given by him in the bill, the latter must be paid on the basis of this rate, in money having legal circulation in the country.

*Article 47.—Right of the acceptor to consign.*

If the bill of exchange is not presented for payment within the delay fixed for making protest for nonpayment the acceptor may, at the risks and costs of the holder, deposit the amount of the bill in the hands of the proper authorities of the place of payment. The consignment shall discharge the acceptor from his obligation, and the holder shall henceforth be able to assert his rights arising from acceptance only upon the sum thus deposited.

**CHAPTER THE FIFTH.—CONDITIONS RESPECTING THE EXERCISE OF RECOURSE.**

*Article 48.*

In order to be entitled to exercise his right of recourse against parties liable upon a bill of exchange other than those stated in article 45, the holder must establish by means of a protest that the bill has been duly presented; and that the acceptance, or the payment, or in case of remittance through a clearing house—that the clearing has not been effected.

Protest must be made within the delay fixed for presentation.

If the bill has been duly protested for nonacceptance or for better security, before maturity, it shall not be necessary to make protest for nonpayment in order to have the right of exercising recourse against the persons who signed the bill before the protest was made.

*Article 49.*

When a party liable on a bill has, by a clause added to his declaration, dispensed with protest, it shall not be necessary to make protest against this person or his warrantor, or against his guarantor. However, and notwithstanding this waiver of protest, the bearer shall be bound to present the bill in due time; the burden of the proof that this requirement has not been complied with shall devolve upon the party who has added this clause, and upon his warrantor or guarantor.

This clause shall not dispense with the obligation to reimburse the costs of the protest.

*Article 50.—Notices to be given.*

The officer authorized to draw deeds of protest is bound to give written notice within the two business days subsequent to the day of the protest, to the parties liable on the bill whose address is indicated thereon, and who have not been parties to the protest. In default of such addresses, said officer shall give notice at the address known to him, or which has been indicated by the person who has demanded the protest.

In case the domicile of the party liable should not be indicated in the bill, the place of his declaration as set forth in the bill shall be considered as his domicile or address.

The expenses involved by these notices shall be added to the costs of the protest.

However, the fact that these notices have been omitted shall not make the protest invalid nor involve loss of recourse.

*Article 51.—Amount of the recourse.*

The holder who has not obtained acceptance or payment from the drawee, or payment from the acceptor, has the right to demand from any party liable:

1. The amount not accepted or not paid of the bill.
2. The reimbursement of the costs of the protest and of other necessary expenses.
3. A commission on the amount not accepted or not paid.
4. Current interest, according to the tenor of the bill, and, if the latter does not stipulate interest, then interest on the unpaid amount from the day of maturity, calculated in accordance with the legal rate of interest applied in the place of payment to debts arising from a bill of exchange.

If the reimbursement of a debt arising from a bill of exchange is demanded before maturity, or before the interest stipulated in it begins to run, interest shall be deducted at the rate of 3 per cent per year from the amount of the bill for the period previous to the time when the stipulated interest begins.

If the party liable is not domiciled within the country of the place of payment, the above-stated amounts shall be calculated in accordance with the provisions applying to the redraft.

*Article 52.—Recourse of the person who reimburses.*

The party liable who has reimbursed the bill may demand from the persons obligated to him:

1. The amount paid in compliance with the recourse and interest running from the day of the reimbursement, at the legal rate of interest in the place of payment for debts arising from bills of exchange.

2. All costs disbursed by him.

3. A commission calculated on the amount paid in compliance with the recourse.

If the creditor and the debtor do not live in the same country, the above-stated amounts shall be calculated in accordance with the provisions applying to the redraft.

*Article 53.—Recourse of party making payment.*

The party liable is bound to pay only upon the delivery of the bill duly discharged, and, if a protest has been made, of the protest annexed to it, with an account of costs.

If the recourse is exercised because only a part of the amount of the bill has not been accepted, the party liable may require that the paid part should be deducted from the bill, and that a receipt shall be given to him.

Each party liable against whom recourse is exercised may require from the holder, in exchange for the reimbursement of the full amount of the bill of exchange, according to the recourse, the delivery of the bill, duly receipted, with the protest annexed to it, and an account of costs. If there are several offers of payment, preference shall be given to the offer which would lead to the greatest number of discharges.

*Article 54.—Redraft.*

The party exercising recourse has the right to draw a bill at sight (redraft) directly on the party liable, for the amount due to him. In this case, the amount of the debt shall be increased by the commissions for the negotiation of the redraft and the stamp duties, if they are imposed.

If the recourse is exercised by the holder, the amount of the redraft shall be fixed according to the quotation, on the day of maturity, of a sight draft drawn from the exchange with which the place of payment is connected on the exchange with which the domicile of the party liable is connected. If the recourse is exercised by a party who has reimbursed the bill, the amount of the recourse shall be calculated according to the quotation, on the day of the reimbursement, of a draft drawn at sight from the exchange with which is connected the domicile of the party exercising recourse upon the exchange with which the domicile of the party liable is connected.

If the party liable requires it, the quotation shall be verified by an official record of the quotations or a statement made by a sworn broker.

If the drawee under redraft does not pay the redraft which is presented to him (including the cost of protest and account of costs),



he shall be obligated not only by the amount of the recourse exercised against him, but also by the amount of the redraft and in addition the interest on the amount of the latter, running from the day of issue of the redraft, and the costs and disbursements arising from nonpayment, the rate of said interest being the same as that of the original draft.

*Article 55.—Right to cancel.*

Any party liable on a bill who shall have given satisfaction to a subsequent party, shall be entitled to cancel his own signature as well as the signatures of his successors.

CHAPTER THE SIXTH.—CONCERNING BOND AND GUARANTEE.

*Article 56.—Giving bond.*

A declaration of bond must be written on the bill itself or on the addition to the bill, and be signed by the guarantor. If the declaration does not specify the person for whom a bond has been given, the bond shall be considered as given for the acceptor, or, if the bill has not been accepted, for the drawer.

Any restriction applying to a bond shall be deemed to be null.

*Article 57.—Obligation of the bondsman.*

The bondsman, saving the provisions of articles 13 and 14, shall be bound in the same manner as the party for whom he intervenes, provided that all the conditions required for giving validity against the latter to the rights arising from the bill of exchange shall have been complied with.

*Article 58.—Rights of the bondsman.*

The bondsman acquires through the payment of the bill all the rights arising from it, both against the party for whom the bond has been given and against the parties who would have been bound toward the latter if he had paid or reimbursed the bill.

*Article 59.—Guarantee.*

The cosigner of a declaration on a bill of exchange (donneur d'aval) is bound by virtue of the law of exchange in accordance with the tenor of such declaration, assuming that the conditions required for giving validity to the rights arising from the bill have been fulfilled in respect of the first signer. If the guarantor merely places his signature on the face of the bill, without specifying which is the statement he intended to sign jointly with the original signer, the declaration of the drawer shall be considered as having been countersigned.

*Article 60.—Rights of the guarantor.*

The guarantor acquires through the payment of a bill of exchange all the rights arising from the bill against all the parties who would have been bound toward the first signer if the latter had paid or reimbursed the bill.

## CHAPTER THE SEVENTH.—OF INTERVENTION.

*Article 61.—Acceptance by intervention.*

If protest has been made for nonacceptance or for absence of guarantee, the bill of exchange may be accepted by intervention in favor of any party liable under it.

*Article 62.—Form of acceptance by intervention.*

Acceptance by intervention must be written on the bill and signed by the person intervening. It must state the party liable (for whose honor) for whom intervention has been made. In default of such a statement the drawer shall be considered as the person for whose honor acceptance has been made.

*Article 63.—Effects of acceptance by intervention.*

The holder is not bound to admit an acceptance by intervention; if he admits it he loses the power to exercise recourse for nonacceptance or for better security.

The predecessors of a holder who admits acceptance by intervention are authorized to establish their rights to reimburse the document and to require that it shall be surrendered to them, in conformity with the terms of section 3 of article 53, and to afterwards exercise recourse.

*Article 64.—Obligation of the acceptor by intervention.*

In consequence of his acceptance by intervention, the party intervening is bound in respect to the successors of the party for whose honor acceptance is made to pay the bill, in the same manner in which the latter would have been bound.

This obligation shall be extinguished if, on the day subsequent to the expiration of the delay given for making protest, the bill protested for nonpayment has not been presented to the party intervening for payment for honor, and if this fact has not been established by a deed of protest.

*Article 65.—Payment by intervention.*

If protest has been made for nonacceptance, for nonpayment, or for better security the bill may be paid for the honor of any party liable; in the first two instances the payment for honor may be made so long as the deed of protest has not been drawn up; in the last case it should be made within the delay given for making protest, or at least on the next business day.

The payer for honor shall have the payment certified in the deed of protest drawn up by the holder or in a document annexed to it; the party intervening whose payment has been refused is entitled to require that his offer to pay shall be stated in the deed of protest or in the document annexed to it.

If the holder refuses a payment by intervention for the full amount of the bill, offered to him in due time, he shall lose his right

to exercise recourse against the successors of the party for whose honor the payment has been made.

*Article 66.—Case of need.*

For a case where the drawee shall not give his acceptance, or shall not pay the bill, the drawer and any indorser may designate in the bill another person (referee) to whom the bill must be presented for payment by intervention.

If the name of the party who has indicated the case of need should be lacking, it shall be considered as having been stated by the drawer of the bill.

*Article 67.—Obligation to present for payment by intervention.*

If a bill protested for nonpayment bears indication of a referee in case of need or acceptance by intervention domiciled in the place of payment, the holder shall be bound to present the bill, not later than the business day following the expiration of the delay given for making protest, to the referee or the acceptor by intervention, or to have noted by a deed of protest the failure to obtain payment.

If he neglects to do so, he shall lose his recourse against the successors of the person who has indicated the referee or of the party for whose honor payment was to be made.

If a bill protested for nonacceptance or for better security bears indication of a referee in case of need domiciled in the place of payment, the holder shall only be entitled to set up his right of recourse against the successors of the person who has indicated the referee in case he presents the bill to the referee for payment by intervention, and should he not succeed in obtaining payment, has this failure set forth by protest.

*Article 68.—Remittance of a discharged bill.*

The bill of exchange and the protest must be delivered to the person intervening upon the payment of the full amount of the recourse. The holder is bound to give on the bill an acknowledgment of the payment by intervention, stating the name of the person intervening and the name of the person for whose honor payment is made. If the latter's name is stated neither in the receipt nor in the protest, the drawer shall be considered as the person for whose honor the bill is paid.

*Article 69.—Effects of payment by intervention.*

Payment by intervention shall discharge the successors of the party for whose honor it is made; the person intervening is vested toward the latter with the rights belonging to an indorser who has reimbursed the bill; but he shall not be entitled to demand a special commission.

A party who pays by intervention, although it appears in the protest that another party, whose payment would have led to a greater number of discharges, has declared himself ready to reimburse the amount of the bill, shall have no recourse against those of his debtors who would have been discharged if the other party had intervened.

*Article 70—Obligation to give notice.*

The acceptor by intervention and the payer for honor are bound to give written notice of the intervention to the person for whose honor the payment has been made, within a delay of two business days; if they neglect to do so, they shall be bound to reimburse to him the damages resulting from this omission.

A post-office receipt, from which it appears that a letter has been sent to the person for whose honor payment has been made, within this delay of two days, shall be considered as a proof that notice has been given to him in due time.

## CHAPTER THE EIGHTH.—REPRODUCTION OF THE BILLS OF EXCHANGE.

*Article 71.—Duplicates.*

The drawer may deliver to the first holder several drafts of the bill of exchange. The drafts must be of the same tenor and contain in their text the statement: "Prima," "Secunda," "Tertia," etc.; if this designation is lacking, each draft shall be considered as an independent bill.

*Article 72.—Obligations arising from duplicates.*

If payment is made on one of the drafts of a bill, the rights arising from the other drafts are extinguished. If, however, an indorser indorses different drafts to different persons, the rights arising from the drafts not surrendered at the time of payment shall remain in force with regard to such indorser and his successors.

Likewise, the acceptor who shall have accepted several drafts of the same bill of exchange is liable in accordance with his acceptances borne upon the drafts not surrendered at the time of payment; unless he proves that the holder of one of the accepted drafts has also received the others, or that at the time of the acquisition of the accepted draft the holder was aware that the several acceptances had been erroneously made.

*Article 73.—Possession of a bill.*

Whoever shall have sent for acceptance one of the drafts of a bill, shall be bound to state on the others the name of the person who has the duplicate sent for acceptance. However, the omission of such a statement shall not deprive the other drafts of their validity as bills of exchange. The depository shall be bound to deliver the draft sent for acceptance to the qualified holder of another draft.

*Article 74.—Use of duplicates.*

The holder of a duplicate setting forth the name of an actual depository of the original shall be bound, before he shall be entitled to exercise recourse, to state by protest that the draft sent for acceptance has not been delivered to him by the indicated depository and that the acceptance or payment demanded by his draft has been refused.

*Article 75.—Copies.*

Any holder of a bill of exchange is entitled to issue copies of it.

The copy must be a reproduction of the bill and of the declarations and statements which it contains and must indicate how far it extends as a copy.

The copy must indicate the depositary of the original draft.

The depositary is bound to deliver the original draft of a bill to the bearer of a copy if the latter gives due proof of his authority by an original indorsement.

*Article 76.—Declarations written on the copy.*

Any copy may be indorsed like a bill of exchange. The declarations of indorsements, of acceptance by intervention, of bond, and of guarantee (aval) borne on the copy have the same force as if they were placed on the original draft.

A copy may also be provided with the indication of a case of need.

*Article 77.—Use of rights arising from a copy.*

The duly qualified holder of a copy containing the indication of a depositary is entitled to exercise recourse, on the basis of this copy, against all parties whose original declarations appear on the copy, if he shows by a protest made within due time for making protest for nonpayment that the original draft has not been remitted to him by the depositary designated in the copy.

## CHAPTER THE NINTH.—GENERAL PROVISIONS CONCERNING THE EXERCISE OF RIGHTS.

*Article 78.—Time and place of acts.*

All acts under the law of exchange against a stated person must take place in the locality designated for this purpose in the bill; in default of such a designation, at the office of the party concerned; and in default of an office, at his domicile during the hours of business as they are determined by local law or custom. They shall not be made at any other premises of the same place or in a neighboring place, except in compliance with a mutual agreement.

Any act made at the office or domicile of a party concerned is valid even if the bill of exchange indicates a neighboring place instead of the place where these premises are really situated.

*Article 79.—Days not available.*

Declarations and acts under the law of exchange shall not be required unless on a day considered as a business day in the place in question. If a declaration, act, or process under the law of exchange must be made on a stated day or within a stated delay, and if the stated day or the last day of the delay is not considered in the place in question as a business day, they must be made on the next business day, the latter being reckoned as the day of maturity.



*Article 80.—“Vis Major.”*

All acts done in view of the establishment and preservation of rights under the law of exchange shall be deemed as having been made in due time and on the last day of the delay fixed for this purpose, if, in the place where they should have been done, they can not be performed on this day on account of public calamity, such as rebellion, an earthquake, a landslide, a war, an epidemic, a flood, or disturbances in the means of communication, or on account of a moratorium.

*Article 81.—Evidence required of the holder.*

The holder of an indorsed bill proves his ownership by an uninterrupted series of indorsements reaching down to himself. Canceled indorsements are considered null.

Whoever fulfills his obligations arising from the bill of exchange or pertaining to it, as well as whoever legally acquires a bill of exchange, shall not be bound to verify the genuineness of the indorsements. The drawer, the indorser, the payer by intervention, the bondsman, or the guarantor (*donneur d'aval*), who has reimbursed the amount of the bill, shall also be considered a holder in due course.

*Article 82.—Defences against the holder.*

The party liable may set up against the lawful holder only the defences concerning the validity of his declaration on the bill, or arising from its tenor, or which involve direct liabilities of the holder to him.

*Article 83.—Protection of the holder.*

The duly qualified holder of a bill shall not be bound to deliver it unless he has acquired it in bad faith (*mala fide*) or he has been guilty of gross negligence in acquiring it.

*Article 84.—Joint liability of parties.*

Where several parties are liable they shall be bound jointly and severally. The holder may proceed against some of them or one only without losing thereby his rights with regard to the parties not sued. Nor shall he be bound by the order of the indorsements.

The joint liability shall extend to all that may be claimed by the holder for nonfulfillment of the obligation of exchange.

## CHAPTER THE TENTH.—LOST BILLS OF EXCHANGE.

*Article 85.—Rights of the owner.*

A bill of exchange lost or destroyed may be declared null by the court having jurisdiction of the place of payment if the applicant presents *prima facie* evidence that he was the owner of such a bill.

By virtue of the decision of the court authorizing procedure, and of the production of a copy of the bill or of a document reproducing its

essential tenor, the owner-sutor is authorized to have a protest drawn for nonpayment within the delay prescribed for this purpose.

By virtue of the same decision of the court, the said owner is also authorized to require at maturity from the acceptor that the latter deposit the amount due in the hands of the proper authorities at the place of payment.

*Article 86.—Discharge of the acceptor.*

The acceptor is discharged from his debt under the law of exchange by a deposit made in compliance with the above-stated provisions. The actual holder of the bill who presents himself in court during the course of the procedure of amortization shall be entitled to validate his rights arising from the acceptance only in respect of the amount thus deposited.

*Article 87.—Effects of annulment.*

Once the bill has been declared to be null, no one shall be entitled to set up rights arising from the document itself.

The party in whose favor the document has been declared to be null may set up against the drawer and the acceptor the rights which would belong to him if he was in possession of the bill, and the drawer, if he gives satisfaction to the applicant, may in like manner set up such rights against the acceptor alone.

If, however, in compliance with the above-stated provisions, the acceptor is discharged from his obligations, the applicant-owner shall not be entitled to set up the rights arising from the bill, except to the amount deposited.

CHAPTER THE ELEVENTH.—PRESCRIPTION IN SUITS ON THE BILLS OF EXCHANGE.

*Article 88.—Delays of prescription.*

Rights under the law of exchange are subject to a time limitation of six months. This delay begins to run, against the holder, from the day of maturity of the bill; against the indorser, the bondsman, the guarantor (*donneur d'aval*), and the paper for honor, from the day of payment if he has paid before suit has been brought against him; in any other case, from the day on which summons have been served on him.

However, all rights under the law of exchange shall expire if they are not set up within a delay of three years from the day of maturity.

*Article 89.—Calculation of the delays.*

With regard to the holder, the years and months of the delay of prescription shall be reckoned in accordance with the calendar used in the place of payment; with regard to his predecessors, in accordance with the calendar used in the place where each of them has his domicile.

*Article 90.—Enrichment.*

If the obligations of the drawer or the acceptor under the law of exchange are extinguished by prescription, or if those of the drawer are extinguished on account of the omission of acts or proceedings required for the preservation of his rights, they shall remain liable toward the holder only so far as the damages occasioned to the latter may have led to their enrichment.

No such right shall subsist in regard to the other parties liable.

These rights are subject to a time limitation of five years, running from the day of maturity of the bill.

*Article 91.—Interruption and suspension of prescription.*

The time limitation shall not be interrupted unless by the filing of the claim, by notice to a third party, or by presentation to the assignee in case of bankruptcy.

Prescription shall again begin to run against the defendant, giving such notice from the day on which the judgment applying to the suit shall have come definitively in force.

There shall be no suspension of prescription unless the party concerned is amenable. However, the party who, according to his national law, is not capable of obligating himself by a bill of exchange, shall be liable if the declaration has been made in a State according to the law of which he would have such capacity.

Interruption and suspension shall have effect only in respect to the party against whom the cause of interruption or of suspension has arisen.

## CHAPTER THE TWELFTH.—PRIVATE INTERNATIONAL LAW.

*Article 92.—Capacity to incur liability.*

Capacity to incur liability by a declaration in a bill of exchange shall be determined by the laws of the State to which the party concerned is amenable. However, the party who, according to his national law, is not capable of obligating himself by a bill of exchange, shall be liable if the declaration has been made in a State according to the law of which he would have such capacity.

*Article 93.—Protest.*

The laws of the State within the territory of which a protest has to be made shall fix the form of protest, the procedure to be followed, and the functionaries qualified for making it (officers of protest).

The laws of the same State shall also determine the steps to be taken and the conditions to be fulfilled in order to make noting for protest equivalent to the protest itself, and whether the officer who has drawn up the deed of protest shall be authorized to accept payment.



## V. THE BREMEN AND BUDAPEST RULES.

By Dr. B. SICHERMANN, Advocate, Kassa, Hungary.

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The conference of the International Law Association, held recently at Budapest (125 L. T. Jour., 523), has, upon a suggestion coming from Hungarian quarters, overhauled the so-called "Bremen Rules" (Bremer Regeln) and, by altering as well as supplementing them, set up the now so-called "Budapest Rules."

There might be some doubt as to the scientific value of such rules, all the questions solved therein having been already thoroughly discussed by the most learned men of divers countries; there might be as well some doubt as to the practical value of such a work, no Government being engaged in it; but certainly there can be no doubt as to the high importance of these rules from the point of view of the possibility and probability of the unification of the principles of the law relating to bills of exchange and the prospects of the efforts made in this line. They may show to the select committee to be appointed by international agreement where the greater difficulties are hidden and in which direction their solution may be sought. Still, this very useful scope can not be fully realized but for the knowledge of the arguments pro and con used in the discussions and of the final agreement on which the resolutions are based. Therefore, I think it advisable, as no official protocols have been drawn up there, to put in permanent form the course of the discussion of the special committee appointed by the conference—of course, on my own responsibility.

On the second day of the conference—the 23d September—Prof. Riesser, Prof. Nagy, Mr. Byles, and the writer of these lines held, before the opening of the full session, a consultation as to the way in which the matter of bills of exchange legislation would best be discussed, and by mutual agreement, and with the consent of Mr. Justice Phillimore, Prof. Riesser, after the opening of the full session, proposed "the appointment of a select committee to discuss the matter of bills of exchange legislation, which is too complicated to be debated on in pleno, and to submit the results of their deliberations to the present conference."

The chairman said there would be no difficulty, as the authors of papers were content that their papers should be taken as read and put on the minutes of the conference, and, the question being put and carried, the following committee was appointed: Mr. Justice Phillimore and Mr. Barnard Byles (England), Prince Cassano (Italy), Dr. Barbey (France), Prof. Riesser (Germany), Prof. F. Nagy and Dr. Sichermann (Hungary), and (in case he should arrive in time) Dr. Meyer (Germany).



The committee, joined by Dr. Hantos, set to work immediately, and, agreeing to the suggestion made by the paper of Dr. Sichermann as to the overhauling of the so-called "Bremen Rules," it examined and discussed these rules one by one, with the following results:

**BREMEN RULES.**

1. The capacity to contract by means of a bill of exchange shall be governed by the general capacity to enter into an obligation.

Passed unaltered in committee.

The committee was fully aware of the fact that this rule only means a formal uniformity of the provisions relating to the capacity of parties, leaving still a large difference between the divers countries as to the limits of minority, but agreed, with due regard to the different state of culture of the various peoples, that for the time being, a uniformity in questions of the limits of minority could not be obtained.

24. The capacity of a foreigner to contract by means of a bill of exchange shall be governed by the law of his country; but a foreigner who enters into a contract of exchange, being incapable of binding himself by such a contract in his own country, shall be bound, if he is capable of binding himself by such a contract under the law of the country in which he contracts.

Passed unaltered in committee.

The suggestion of supplementing this rule by a provision in case the party concerned belong to more than one country (or if his country could not be established)—applying thereby to the law of his domicile—was declined as belonging to the vast number of details the conference could not enter into.

To both these rules there were many amendments in pleno, especially with regard to their style; further, it was deemed advisable to unite both provisions in one rule and to drop the explicit declaration (regarded as superfluous) that the capacity of a foreigner shall be governed by the law of his country. Thus finally in pleno it was carried as the first rule:

1. The capacity to contract by means of a bill of exchange shall be determined by the general capacity to enter into a contract; but a person, although incapable of binding himself by such a contract in his own country, shall also be bound, if he is capable of so binding himself under the law of the country in which he contracts.

2. To constitute a bill of exchange it shall be necessary to insert on the face of the instrument the words "bill of exchange" or their equivalent.

Passed unaltered.

Though this means a new requisite from the standpoint of the English as well as the French law, and requisites should rather be diminished, still the committee thought it advisable to maintain this rule, because the international law to be created is to deal only with bills of exchange, and the requisite stated in this rule seems the most suitable one for the distinguishing of bills from any other negotiable instrument. The suggestion of altering this rule, in so far that the words "bills of exchange" should be put in the context of the bill, was declined as being an unnecessary increase of formalities.

**BREMEN RULES.**

3. It shall not be obligatory to insert on the face of the instrument, or on any indorsement, the words "value received," nor to state a consideration.

4. Usances shall be abolished.

Both rules passed unaltered without any discussion.

5. The validity of a bill of exchange shall not be affected by the absence or insufficiency of a stamp.

Considering how very hard Governments are on financial questions, and that the unification might fail by the opposition of the various revenue departments, the committee—though agreeing unanimously to the tenor of the rule—found it advisable to alter it as follows:

5. It is desirable that the validity of a bill of exchange should not be affected by the absence or insufficiency of a stamp.

6. A bill of exchange shall be deemed negotiable to order, unless restricted in express words on the face of the instrument or on an indorsement.

Passed unaltered without any discussion.

7. The making of a bill of exchange to bearer shall not be allowed.

Considering that the rules do not object to the negotiability of bills by blank indorsement, whereby the bill in fact works as an instrument payable to bearer; further, that the bills payable to bearer have become so naturalized in the territories of Anglo-American law that it is hardly to be expected that those territories will give them up; finally, that the checks payable to bearer have, in the last years, worked their way without any further harm into the countries ruled by the French and German laws, the committee altered this rule as follows:

7. The making of a bill of exchange to the bearer shall be allowed.

To this the committee added the following supplement:

The bill of exchange shall not be invalid by reason that it is not dated or does not specify the place where it is drawn, or the place where it is payable.

The committee, recognizing it as desirable that the number of essential requisites in a bill should be reduced, considered, further, that this supplement corresponds to the Anglo-American law, and that it is easier in the unification of diverging laws to drop requisites than to take them up. The committee, of course, was aware that provisions will be needed—according to the English code (sec. 454)—by which the place of payment, not specified in the bill, could be ascertained.

In pleno this supplement was carried, but as a separate rule, receiving the number 9.

#### BREMEN RULES.

#### BUDAPEST RULES.

8. The rule of law of *distantia loci* shall not apply to bills of exchange.

Passed unaltered without any discussion, receiving in pleno the number 10.

9. A bill of exchange shall be negotiable by blank indorsement.

Passed unaltered without any discussion, receiving in pleno the number 8.

10. The indorsement of an overdue bill of exchange which has not been duly protested for dishonor for non-payment shall convey to the holder a right of recourse only against the acceptor and indorsers subsequent to due date. Where due protest has been made, the holder shall only possess the rights of the indorser to him against the acceptor, drawer, and prior indorsers.

This rule—corresponding to the singular provision of section 16 of the German law—raised a long discussion, not so much as to the efficiency of the protest, the committee agreeing that there is no practical reason why such an influence should be granted to the protest in this relation, but as to the character of the indorsement on an overdue bill.

Some of the members explained that the negotiability of the bill had to cease at its maturity, as maturity involves the natural expiring of the life and course of the bill, by which the parties liable on the bill obtain rights against the holder that should not be altered by subsequent negotiations; therefore the indorsee of an overdue bill had to enter only into the rights of his indorser.

Against this other members argued that this solution answers neither to the abstract nature of the bill nor the exigencies of the intercourse of bills; for the parties signing the bill before its maturity assume full liability toward every bona fide holder, and nothing in the bill shows that this liability is restricted in case the bill should be negotiated after maturity; further, that, according to the general intention of the parties negotiating an overdue bill, the transfer of such a bill should have—to use the German expression—a thorough *Transporteffect* giving full legitimation and attaching no defect of title thereto; that there is no practical reason for hampering the parties in negotiating such bills, the parties liable on the bill having the power to restrict the negotiability of the instrument beforehand,

if such be in their interest; and, finally, that the difference made between an indorsement before, and an indorsement after, maturity, raises a great number of difficult questions of law as well as of fact, to be avoided by the law relating to bills, especially with regard to international intercourse.

Therefore this question ought to be solved according to the French jurisprudence (and according to the project of the congress at Brussels), which grants the indorsee of an overdue bill—without any regard to the protest—entirely independent rights, and places him on an equality with the indorsee of a not overdue bill. The committee, after having considered all arguments, agreed on the following rule:

“The mere fact that the bill of exchange was overdue at the time of an indorsement shall not affect this indorsement.”

In pleno this rule (receiving the number 11) was altered in style as follows:

#### BREMEN RULES.

11. The acceptance of a bill of exchange must be in writing on the face of the bill itself. The signature of the drawee (without additional words) shall constitute acceptance, if written on the face of the bill.

The committee agreed that a provision according to which the explicit acceptance should be written on the face of the bill might be an unnecessary formality, to be found in neither the German, English, nor French codes, and therefore passed this rule as follows:

#### BUDAPEST RULES.

11. The mere fact that the bill of exchange was overdue at the time of an indorsement shall not affect the character of this indorsement as such.

12. The acceptance of a bill of exchange must be in writing on the bill itself. The signature of the drawee (without additional words) shall constitute acceptance, if written on the face of the bill.

It was carried in pleno, receiving the number 12.

12. The drawee may accept for a less sum than the amount of the bill.

Passed unaltered in committee without any discussion. In pleno this rule (receiving the number 13) was amended, for clearness' sake, as follows:

13. In case of dishonor for non-acceptance, the holder shall have an immediate right of action against the drawer and the indorsers for payment of the amount of the bill and expenses, less discount.

13. The drawee may accept for a less sum than the amount of the bill; any other restriction should be equivalent to refusal.

Passed unaltered but for the words “and any other parties liable,” which were interpolated after the word “indorsers.”

The committee agreed that the English system of immediate recourse answered best the needs of general intercourse, and cuts off even the possibility of many complications arising out of the need of securities (German system), as well as of the elective power granted by the French law to the sued parties. But, as there might be other parties liable on the bill, words had to be interpolated accordingly.

The suggestion as to fixing the discount "according to the legal rate of interest of the place of drawing" was declined, as the amount of the discount should rather be determined with regard to the facts of the particular case. This rule received in pleno the number 14.

**BREMEN RULES.**

14. Cancellation of a written acceptance shall be of no effect.

**BUDAPEST RULES.**

14. In case of dishonor for non-acceptance the holder shall have an immediate right of action against the drawer, the indorsers, and any other parties liable for payment of the amount of the bill and expenses, less discount.

Considering that this rule is totally at variance with the respective provisions of the English, French, and Italian law; further, that also in the territories governed by the German law the drawer, indorsers, and other parties liable may revoke their declarations placed on a bill and cancel their signatures as long as they are in possession of it; finally, that even in Germany this rule is regarded only as the extreme consequence of theoretical views (Kreationstheorie), the committee agreed on the following rule, which received in pleno the number 15.

15. Where the acceptor shall have committed an act of bankruptcy before due date, the holder shall have an immediate right of action against the drawer and indorsers for payment of the amount of the bill and expenses, less discount.

15. Where an acceptance is written on a bill and the drawee has parted with the possession of it, or has given written notice to, or according to the directions of, the person entitled to the bill that he has accepted it, the cancellation of the acceptance shall be of no effect.

Passed unaltered but for the words "and any other parties liable," interpolated after the word "indorsers."

With due regard to the usage of trade by which merchants, eager to preserve their own credit, hurry to take up bills the acceptor of which has committed bankruptcy, and partly for the other reasons given above ad 14 (Budapest rules), the committee agreed in maintaining this rule, interpolating it as mentioned; the committee being of opinion that, in case of bankruptcy on the part of the acceptor, every party liable on the bill—the acceptor not excluded—should be bound to pay immediately.

This rule received in pleno the number 16.

16. No days of grace shall be allowed.

16. Where the acceptor shall have committed an act of bankruptcy before due date, the holder shall have an immediate right of action against the drawer, the indorsers, and any other parties liable for payment of the amount of the bill and expenses, less discount.

Passed unaltered in committee without further discussion, and received in pleno the number 17.

17. The holder of a bill of exchange shall not be bound, in seeking recourse, by the order of succession of the indorsements, nor by any prior election.

Passed unaltered in committee without any discussion, and received in pleno the number 22.



## BREMEN RULES.

18. Protest, or noting for protest, shall be necessary to preserve the right of recourse upon a bill of exchange dishonored for nonacceptance or for nonpayment.

## BUDAPEST RULES.

About this rule the committee had to enter on prolonged discussion. It had to be considered that, according to the English code, inland bills need neither protest nor noting; further, that there is a strong current in the mercantile as well as in the scientific world as to the abolishing of the institution of protest, regarded nowadays as obsolete and as a superfluous and onerous formality; finally, that the Italian law relating to bills, as well as the new Austrian and German law relating to checks (the Hungarian bill to be passed shortly being of the same tenor), give to the holder an elective right between the protest and a declaration to be written by the drawee on the instrument. On the other hand, it was explained that the presentment for acceptance as well as for payment are the pillars the system of recourse is based upon; that accordingly an international law had to provide for means of proof thereof fully recognized as such in every country; that for the time being wide discrepancies exist between the divers countries as to questions of proof and the procedure relating to it—discrepancies the removal of which can not be hoped for nowadays, the state of culture being very diverse in the different countries; that it is only the protest which is recognized as a full proof everywhere, and that by applying the *lex locus regit actum*, this institution is the only one that supplies means of proof in which an international intercourse could acquiesce.

Deliberating on all these arguments, the committee agreed in maintaining this rule; but the committee wished also to have it explicitly stated that in this question the *lex locus regit actum* should be applied, leaving thus full freedom to every country to determine the formalities of the protest or noting according to its own needs and circumstances.

The committee agreed, therefore, on the following rule:

18. Protest, or noting for protest, according to the law of the country shall be necessary to preserve the right of recourse upon a bill of exchange dishonored for nonacceptance or for nonpayment.

19. Immediate notice of dishonor shall be necessary to preserve the right of recourse upon a bill of exchange.

This rule has been the great stumbling-block of discussion, as on this point the discrepancy between English, French, and German law appeared irreconcilable. The debate on this matter seemed not to have the ghost of a chance of resulting in an agreement and had to be adjourned till the dispatch of the other questions, in the hope that an agreement could be perhaps attained then; nor was this hope a vain one.

It was proposed that immediate notice of dishonor should not be necessary at all (the French system leading practically to it), arguing that, though it be desirable that the dishonoring of a bill

should be notified as soon as possible to the parties liable on the bill, the omission of this notice can hardly be so harmful to the not notified as to justify the entire discharging of such a one; the duty to give notice being besides not in accord with the indorsement in blank, and raising again difficult questions of fact. Moreover, in most cases, the holder of the bill, as the French practice shows, will certainly in his own interest, without any legal duty, notify the solvent preceding indorser as soon as possible.

Another proposition recommended the German system (i. e., the constitution of a duty to give notice, under liability only for damages and loss of the right to interest and costs), as the very spirit of commerce and good faith (*Treu und Glauben*) require that immediate notice should be given to the preceding parties, which duty, however, appears sufficiently secured by the liability for damages, etc.—the loss of the entire right of recourse in consequence of want of notice, as in most cases highly inequitable, could not be approved of by Continental people; wherefore the corresponding former Bremen rule, based on the German system, ought to be restored.

According to the third opinion, the rule ought to be maintained unaltered (English system). The interests of the preceding parties require immediate notice of dishonor, so that these parties may be enabled to take in due time the necessary steps to save further loss and expense. This duty to give notice could not be secured by the right to damages only, as by this right the injured preceding party would have to bear the *onus probandi*, which often frustrates actions for amends or damages.

Again, it was argued that there is no reason to place the not notified in a better position than any other person injured by *dolus* or *culpa*; <sup>1</sup> finally, that also at present in a similar case, according to the English code (*vide* 74th sec.), the damnified drawer of a check not presented in reasonable time has to bear the *onus probandi*.

Deliberating on all these arguments, the committee finally agreed in stating the duty to give immediate notice to every preceding party, but mitigating the consequence of the neglect to give such notice by granting to the not notified only the right of discharge to the extent of the loss or damage caused by the want of such notice, and allowing this loss to be pleaded as a defense *pro tanto* instead of a cross or counter claim.

Thus, after a long and animated discussion, the committee agreed on the following rule:

#### BREMEN RULES.

#### BUDAPEST RULES.

19. Immediate notice of dishonor must be given; if it be not so given the party sued shall be discharged to the extent of the loss or damage caused by the want of such notice.

20. The time within which protest must be made shall be extended in the case of *vis major* during the time of the cause of interruption, but shall not in any event exceed a short period of time to be fixed by the code.

<sup>1</sup> According to the old English doctrine on this subject—i. e., in case of want of notice—it lay on the defendant to prove that he had been injured by the want of notice. (*Byles on Bills*, 16th ed., p. 244.)

The committee agreed that the words "but shall not," etc., should be left out, because this part of the rule contradicts the antecedent part; besides, the establishing of such a period would be only arbitrary, and lead to want of equity in case of a moratorium.

Thus, this rule passed in committee as follows:

#### BREMEN RULES.

#### BUDAPEST RULES.

20. The time within which protest must be made shall be extended in the case of vis major during the time of the cause of interruption.

21. No annulling clause need be inserted in duplicates.

Passed unaltered in committee; but the committee came to the conclusion that, considering the many dangers for creditors as well as debtors connected with the issue of duplicates, it is not right to compel the drawer and the indorsers to deliver duplicates without agreement, and even without security, to holders they perhaps never had the least intention to trust, and that in consequence the English law seems more to answer the real interests of the parties liable on the bill; therefore this rule was supplemented in the following manner:

"There shall be no obligation to give a set or a duplicate without an agreement between the parties thereto.

"Only in case where a bill has been lost before it is overdue the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

"No annulling clause need be inserted in duplicates."

The second and third subsections of this rule were altered in pleno as follows:

21. There shall be no obligation to give a set or a duplicate without an agreement between the parties thereto.

But where a bill has been lost before it is overdue, the person who was the holder of it shall be entitled to require of the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

No annulling clause need be inserted in duplicates if marked as such.

22. A simultaneous right of action on a bill of exchange shall be allowed against all or any one or more of the parties to the bill.

Passed unaltered in committee; in pleno it received the number 23, and was altered in the following manner:

23. The surety upon a bill of exchange (donneur d'aval) shall be primarily liable with the person whose surety he is.

23. A simultaneous right of action on a bill of exchange shall be allowed against all or some or any one of the parties to the bill.

Passed unaltered in committee; in pleno it received the number 24, and for clearness' sake altered in the following manner:

## BREMEN RULES.

## BUDAPEST RULES.

24. The *donneur d'aval* (surety upon a bill of exchange) shall be equally liable with the person whose surety he is.

25. The owner of a lost or destroyed bill of exchange, duly protested for want of payment, has a right, upon giving security, to payment of the bill by the acceptor, any indorser prior to himself, or the drawer.

The committee agreed with the opinion that the provision of this rule as to the protest being also necessary against the acceptor was an evident error, for in the sense of the Bremen rules protest for want of payment is not necessary in order to preserve the liability of the acceptor.

As for the rest, opinions were largely at variance.

Some of the members wanted to maintain the rule, but for an alteration to remove the error above mentioned. They explained that according to English, French, and Italian law, as well as according to the new German practice based upon the—though controverted—ten hundred and eighteenth section of the *Civilprozessordnung*, the owner of a lost or destroyed bill, duly protested for want of payment, preserved his rights against all preceding parties; further, that declarations put on bills and rights arising from them could not vanish by a simple fact not intended by the parties; and, finally, that it would show want of equity if the owner be deprived of his rights by a mere accident he might be quite innocent of.

Other members argued that, strictly speaking, the nature of the bill (*Einlösungspapier*) requires that any claim and right should be lost with the instrument in which it is embodied. In spite of this, a right to payment can be granted out of equity to the owner of a lost bill against the acceptor, as the acceptor has received funds for it, and must deliver them without being entitled to seek recourse. Thus he does not fulfill more than he would have to do if the bill were not lost. It is not so, however, with the other parties liable—each would have recourse against his preceding man by reason of his payment; but if the owner had lost the bill, and could not therefore deliver it, each would likewise have to give security to his preceding man, thus fulfilling more than he would have had to do if no accident had befallen the owner. Even if it were the case that *cessio securitatis* should be granted to the preceding party who has taken up, not the bill but the amortisation paper, this party—though he may sue his preceding man without giving new security—had still to run the risks of suing without being able to show the original signatures, and besides had to incur the risk of paying without being able to assure himself whether the lost instrument really bore his signature; thus, to entitle the losing owner against the preceding parties (indorsers and drawer) would mean dispensing equity in favor of the loser, but at the cost of the other parties liable.

True, by the denying of this right the loser might get injured, but the interests of the loser can hardly be combined with those

of the preceding parties without injuring the one or the other, and therefore the law must choose whether it will rather protect the loser or look after the legitimate demands of intercourse. There can be no doubt as to which choice the law ought to make. Whoso takes a bill should take care of it; in nine cases out of ten the loss or destruction of a bill is in some way or other the outcome of an incautiousness on the part of the owner, and very equity requires that he alone should bear the consequences and should be saved from them only in so far as it does not injure or endanger other innocent parties. And, even if the loser be quite innocent, there is no reason why the law should interpose to shift the injury from one innocent man to another and why these other innocent parties should be endangered. This should not be done, especially in a system of law by which the right of recourse is denied to the most innocent holder when he has missed the protest even by one single day. Therefore the law relating to bills in Austria as well as in Hungary (according to the text of the German law) quite rightly allows the owner a claim only on the acceptor, and about this provision of the law no complaints are heard. The only remedy that could be granted to the loser of a bill not overdue would be the right to a duplicate against the drawer according to the twenty-first rule, because it is only the drawer who incurs no risks by giving a duplicate, getting due security for it. True, the loser can apply to the drawer only in case he be the payee or the lost bill be payable to bearer, but it can not be helped; after all, the losing or destroying of a bill is an accident, and no human law can remove all the sad consequences resulting from an accident.

Against this it was contended that, though this standpoint might be accepted from the point of view of the legitimate interests of the indorsers, still the situation of the drawer is a different one in this relation. Very often it is the drawer who has the funds in hand and is the real debtor; he usually has satisfactory means to prove the genuineness of the acceptor's signature, and he at least ought to know on what bills he has put his signature, besides which—according to the French and German law—he eventually remains liable on the bill, though the protest might be omitted.

Finally, by mutual agreement the committee compromised on the following rule (which was carried in pleno):

#### BREMEN RULES.

26. The limitation of actions upon bills of exchange against all the parties (acceptor, drawer, indorsers, and sureties—*donneurs d'aval*) shall be 18 months from due date.

This rule, too, gave rise to a great discussion in committee. Some of the members wished this rule to be left out altogether, the statute of limitation being an institution of civil law, and as such connected with the particular law system of each country, besides there being

#### BUDAPEST RULES.

25. The owner of a lost or destroyed bill of exchange has, upon giving security, a right to payment of the bill by the acceptor, and the same right against the drawer as he would have had if the bill had not been lost or destroyed.



no reason for making differences in this relation between liabilities on bills and other liabilities. Again, other members argued that the differences of provisions relating to limitation are very large and various throughout the divers countries; moreover, there is a great controversy as to which law governs the limitation—whether the *lex fori* (English practice) or the *lex loci contractus* (continental theory)—endangering to a high degree international intercourse, wherefore it is a most pressing necessity that this precise question should be solved in a uniform manner; further, that the course of bills being by nature a rapid one, it appears justified that the time of limitation of bills should be shorter than that of other liabilities.

The committee further discussed whether the time of limitation should be the same for every liability on the bill, or a difference should be made between the acceptor and other parties liable; finally, from what time the statute of limitation ought to begin to run.

It was held by one party that there ought to be stated a longer time (three years), running from the date of the maturity of the bill, against the acceptor, and a shorter one (six months) against the other parties, running from the date of protest against the protesting holder, or else from the date when the indorser or drawer has paid the dishonored bill, or a writ relating to that bill has been served on him. This difference ought to be made to give all indorsers, often living in different and distant countries, sufficient time to take up the bill and to turn to the acceptor, who usually is the real debtor.

The other party argued that in many cases it is not the acceptor who, as between himself and the drawer or indorser, is really bound to pay the bill; further, that the liability of the parties being a simultaneous one, its length of time should be stated uniformly; that by granting a sufficient period every party would have enough time to turn to his preceding man, communication being nowadays so rapid; and lastly, that the stating of the same time, and this running from the day the bill falls due, involves a great simplification, a very essential point in international intercourse.

After due deliberation of all these arguments, the committee, leaving out the superfluous and not complete enumeration of the "Bremen rule," compromised on the following rule:

"The limitation of actions upon bills of exchange against all parties shall be 18 months from due date."

The expression "from due date" being objected to in pleno, has been altered to "from the date of the maturity of the bill." Thus this rule runs as follows:

#### BREMEN RULES.

#### BUDAPEST RULES.

26. The limitation of actions upon bills of exchange against all parties shall be eighteen months from the date of the maturity of the bill.

In the foregoing articles the term "bill of exchange" shall include promissory notes, where such interpretation is applicable; but "promissory note" shall not apply to coupons, bankers' checks, and other similar instruments in those countries where such instruments are classed as promissory notes.

Considering that in various countries special laws exist relating to checks and other negotiable instruments, the unification of which needs separate proceedings and preparatory work still to be done, the committee agreed on the following rule:

**BREMEN RULES.****BUDAPEST RULES.**

In the foregoing articles the term "bill of exchange" shall include promissory notes, where such interpretation is applicable, but shall not apply to checks.

About the committee work Geheimrat Prof. Riesser delivered next day an excellent report in full session, being thanked for it by the chairman and applauded by the conference. The proposition of the special committee was then put to the conference, and, after various suggestions by Sir Thomas Barclay (Paris), Sir Horatio Shepherd, Mr. W. F. Hamilton, K. C., Dr. Darby, Mr. Leader, Mr. Barratt (London), Dr. Friedmann, Dr. Siegfried Goldschmidt (Berlin), and the members of the committee, the rules were adopted in the form given above.

Thus ended the proceedings of the committee, of which this report gives, of course, only a dry extract and a faint idea, as the discussion moved on the utmost heights of theory as well as entering into the inmost recesses of practical life—always led by mutual esteem and forbearance, and especially by good will—a discussion which every member of the committee, I am sure, will ever remember with great pleasure.

In examining and criticising these rules many objections, of course, can be made of which the members of the committee are also aware; but it ought to be considered that almost each of these rules means the removing of an important discrepancy and of a great clog hindering the unification of laws, and it should be considered, too, that almost every one is the result of prolonged fights and hard discussions.

This result has been obtained only by mutual yielding. It was a matter of give and take, as the saying is; every member of the committee had to sacrifice part of his convictions, or, at any rate, part of the law of his country to which he was well accustomed; they had to do it for the sake of unification, and with due regard to the probability of having these solutions approved at home as well as by the select committee to be appointed by the Governments for international agreement.

I could not close without stating that this result would not have been obtained but for the continual tactful intervention and successful activity of the honorable Mr. Justice Phillimore, to whom we all are deeply indebted.

May the select committee to be appointed by the Governments be inspired by the same spirit as the committee of the Budapest Conference, and may it have similar leaders.



## APPENDIX H.

### I. PROVISIONS OF THE ENGLISH BILLS OF EXCHANGE ACT, 1882, IN REGARD TO CROSSED CHECKS.

SEC. 76. (1) Where a check bears across its face an addition of—

(a) The words “and company” or any abbreviation thereof between two parallel transverse lines, either with or without the words “not negotiable,” or

(b) Two parallel transverse lines simply, either with or without the words “not negotiable,” that addition constitutes a crossing, and the check is crossed generally.

(2) Where a check bears across its face an addition of the name of a banker, either with or without the words “not negotiable,” that addition constitutes a crossing, and the check is crossed specially and to that banker.

77. (1) A check may be crossed generally or specially by the drawer.

(2) Where a check is uncrossed, the holder may cross it generally or specially.

(3) Where a check is crossed generally, the holder may cross it specially.

(4) Where a check is crossed generally or specially, the holder may add the words “not negotiable.”

(5) Where a check is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed check or a check crossed generally is sent to a banker for collection, he may cross it specially to himself.

78. A crossing authorized by this act is a material part of the check: It shall not be lawful for any person to obliterate, or, except as authorized by this act, to add to or alter the crossing.

79. (1) Where a check is crossed specially to more than one banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2) Where the banker on whom a check is drawn which is so crossed nevertheless pays the same, or pays a check crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the check for any loss he may sustain owing to the check having been so paid.

Provided that where a check is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this act, the banker paying the check in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the check having been crossed, or of the crossing having

been obliterated or having been added to or altered otherwise than as authorized by this act, and of payment having been made otherwise than to a banker, or to the banker to whom the check is or was crossed, or to his agent for collection, being a banker, as the case may be.

80. Where the banker on whom a crossed check is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection, being a banker, the banker paying the check, and, if the check has come into the hands of the payee, the drawer shall, respectively, be entitled to the same rights and be placed in the same position as if payment of the check had been made to the true owner thereof.

81. Where a person takes a crossed check which bears on it the words, "not negotiable," he shall not have and shall not be capable of giving a better title to the check than that which the person from whom he took it had.

82. Where a banker in good faith and without negligence receives payment for a customer of a check crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the check by reason only of having received such payment.



## II.—THE USE OF CROSSED CHECKS IN FRANCE.

[From a letter of Oct. 8, 1910, from Mr. Ernest Picard, secretary general of the Bank of France.]

The crossed check has not yet been recognized in France by legislative provisions \* \* \*. In practice, however, an appreciable number of merchants, manufacturers, and even individuals, desiring to obtain the advantage which the crossed check secures, issue checks marked with two bars and often with an explanatory declaration thus expressed:

By express order of the drawer the present check will be paid only to a banker or to a ministerial officer.

The different banks, without having reached an official agreement on this subject, permit such checks and recognize the stipulation of the drawer. The Bank of France, especially desirous of favoring a mode of payment which in the ultimate analysis ought to diminish the inconveniences and dangers of payment in money, places the amount of such checks to the credit of those who present them, when they are bankers, ministerial officers, or those having current accounts at the bank. If not, the bank pays them only through an authorized legal agent (*huissier*).

This usage seems to be developing and to meet a desire which is growing in the business world. While waiting for legislation to recognize the crossed check and to define the rights and the duties of each of the parties, the present legal situation of the crossed check is not easy to define. No decision of the courts has occurred, to my knowledge, on the question—the difficulties which might present themselves at the time of payment having in practice always been settled amicably; but we consider that the drawer is free to restrict, by a special agreement, the rights of the beneficiary in such a manner that the check can be paid only to a certain class of persons. Such an understanding, which does not seem to us contrary to the provisions of the code in the present state of our legislation, might, in our opinion, result not only from the explicit declaration which I have set forth above, but even if the usage became general, from the simple placing of the two transverse lines which have given their name to the crossed check.

The responsibility of the drawee of a crossed check, in case of payment to a person other than a banker or a ministerial officer, and that of the holder of a check of this nature, who is the beneficiary of an indorsement emanating from a person not qualified, have not yet been examined by our courts under the régime of the present law. These are questions which will have to be solved by legislation yet to take place.



### III. REPORTS TO THE FRENCH SENATE ON BILLS TO PROVIDE FOR CROSSED CHECKS.

[No. 470. Sénat. Année 1906, session extraordinaire. Annexe au procès-verbal de la séance du 26 décembre 1906.]

#### PROPOSITION DE LOI CONCERNANT LES CHÈQUES BARRÉS ET LES CHÈQUES NON NÉGOCIABLES.

[Présentée Par M. Antony Ratier, Sénateur.]

##### MESSIEURS:

La proposition de loi que nous vous présentons a pour objet de compléter la loi du 14 juin 1865 sur les chèques, afin d'apporter à l'usage des chèques des perfectionnements réclamés depuis longtemps par les représentants autorisés du commerce français.

Notre loi est muette sur les chèques barrés et sur les chèques non négociables, qui sont cependant susceptibles d'assurer la commodité et la sécurité des paiements. La loi anglaise qui en a permis et réglé l'usage depuis de longues années, a ainsi donné au commerce britannique un outil d'une valeur incomparable qui a puissamment contribué à la prospérité commerciale de l'Angleterre.

Le chèque barré tire son nom des deux barres transversales dont il est revêtu par le tireur ou par un endosseur. Il n'est alors payable que par l'intermédiaire d'un banquier. Si le nom d'un banquier est inséré entre les deux barres transversales, ce banquier peut seul en encaisser le montant pour le compte de son client. On obtient ainsi une sécurité très grande contre les conséquences d'un vol, car si le chèque est volé en cours de route, le voleur ne peut pas l'encaisser directement, même en falsifiant la signature du bénéficiaire ou du dernier endosseur. Il est obligé de le faire présenter par le banquier, dont le nom est inscrit entre les deux barres. Or, ce banquier, étant celui du bénéficiaire ou du dernier endosseur, connaît la signature de son client et s'aperçoit immédiatement de la falsification.

La sécurité offerte par le chèque barré est portée à son maximum lorsqu'il est revêtu de la mention "non négociable." La fraude est alors rendue impossible. Le chèque "non négociable" ne cesse point d'être transmissible, exactement comme un chèque ordinaire, mais avec cette différence que le cessionnaire n'a pas plus de droits que son cédant. Par exemple, si le chèque est perdu en cours de route et tombe entre les mains d'un voleur qui l'endosse à un tiers de bonne foi, ce dernier ne pourra pas encaisser le chèque volé en arguant de son ignorance de la fraude et il est tenu de le restituer à son légitime propriétaire. Dans la pratique commerciale, par conséquent, les maisons notoirement honorables peuvent transmettre, sans la moindre difficulté, les chèques revêtus de la mention "non négociable," chacune sachant qu'elles en sont porteurs réguliers. Ces chèques ne sont refusés que s'ils sont présentés par des individus inconnus ou suspects, ou bien ils ne sont acceptés qu'à l'encaissement et les espèces ne sont remises qu'après que le montant du chèque a été régulièrement touché par le banquier encaisseur.

L'introduction des chèques non négociables dans notre vie commerciale accentuera très nettement la différence essentielle entre le chèque qui est un instrument de paiement au comptant et la lettre de change qui est un instrument de paiement à terme.

La loi française fixe, en effet, le délai maximum d'encaissement à cinq jours pour les chèques payables sur place et à huit jours pour les chèques payables sur une autre place.

La lettre de change, au contraire, est un moyen de crédit qui répond à des besoins distincts. C'est une véritable monnaie fiduciaire à terme qui peut passer dans un très grand nombre de mains pendant trois mois, avant d'être convertie en argent au jour de son échéance.

L'immense avantage du chèque barré et surtout du chèque barré non négociable consiste donc surtout dans la sécurité qu'il procure pour les paiements au comptant et dans la simplification des opérations auxquelles les commerçants doivent avoir recours à l'époque des échéances pour faire et recevoir leurs paiements. En Angleterre, les envois de fonds se font sous forme de chèques barrés non négociables envoyés par la poste, sans même qu'il soit jugé utile de faire recommander les lettres d'envoi. Le bénéficiaire du chèque le reçoit, l'acquitte, et le remet à son banquier qui l'encaisse immédiatement et en porte le montant au crédit de son client. Celui-ci, à son tour, paye ses propres fournisseurs en chèques de même nature sur un banquier. Les dangers résultant de la perte ou du vol sont nuls en pratique. Les paiements en numéraire sont remplacés par de simples virements. On évite ainsi les erreurs de caisse, les frais de chargement pour les envois de billets de banque par correspondance. Le service de caisse est réduit au minimum et il devient inutile de mobiliser à chaque fin de mois d'innombrables garçons de recette, accessibles à toutes les tentations, et fréquemment victimes de vols. Il en résulte une économie considérable de temps et d'argent qui permet aux commerçants de travailler à meilleur compte et plus rapidement. Les paiements ainsi effectués sans déplacement de numéraire, ont pris un développement colossal en Angleterre. Ils dépassent probablement sept cents milliards de francs par an.

La chambre de compensation des banquiers de Londres dite "clearing house" a compensé à elle seule, en 1904, deux cent soixante-quatre milliards de francs en chèques. Dans la même année, 345 milliards étaient compensés par le "clearing house" de New-York. Ce chiffre est environ vingt fois supérieur au chiffre des virements de la chambre de compensation des banquiers de Paris.

La suppression des lents et encombrants paiements en numéraire pour la majeure partie des transactions commerciales aura encore d'autres avantages. Elle permettra d'employer d'une façon productive une fraction de notre stock d'or et d'argent monnayé que notre système suranné nous oblige à maintenir à un niveau bien supérieur à celui des pays voisins.

C'est ainsi que le 9 novembre 1905, la Banque de France avait en circulation pour 4,527,000,000 de francs de billets, alors que la Banque d'Angleterre n'en avait que pour 725 millions. Et cependant, le commerce britannique est le triple du commerce français. La circulation du chèque aide à expliquer cette considérable différence.

Nous pouvons donc espérer que le chèque barré généralisera l'emploi du chèque et tendra ainsi à mettre dans la circulation tous ces petits capitaux improductifs qui dorment dans les tiroirs.

Les avantages du chèque barré et non négociable sont d'ailleurs tellement manifestes qu'un mouvement d'opinion très accentué s'est produit dans les cercles commerciaux pour réclamer l'intervention du législateur.

Les chambres de commerce de Paris, de Lille, de Calais, la chambre de commerce française de Londres, la Société d'Economie industrielle et commerciale, l'Association générale des Tissus, la Chambre syndicale des Négociants commissionnaires et du commerce extérieur, l'Union des Banquiers de Paris et de la province, ont, à diverses reprises, émis des vœux en ce sens. Les jurisconsultes qui se sont occupés de la question sont également unanimes à préconiser l'emploi des chèques barrés et non négociables.

Il paraît donc indispensable de combler la lacune que notre législation présente sur ce point et de suivre l'exemple qui nous a été donné non seulement par l'Angleterre, mais aussi par l'Espagne (article 541 du code de commerce espagnol) et par la République Argentine (code de commerce mis en vigueur le 1<sup>er</sup> mai 1890).

Notre commerce tirera un profit inappréciable de l'instrument perfectionné que le législateur aura mis à sa disposition par la loi dont nous vous soumettons le projet:

#### PROPOSITION DE LOI.

##### *Article unique.*

Les dispositions suivantes sont ajoutées à l'article premier de la loi du 14 juin 1865:

Le chèque traversé de deux barres transversales et parallèles n'est payable que par l'intermédiaire d'un banquier.

Le barrement peut être effectué par le tireur, par le bénéficiaire, ou par un endosseur.

Si le nom d'un banquier est inscrit entre les deux barres transversales, le chèque n'est payable que par l'intermédiaire du banquier ainsi désigné. Toutefois, s'il n'opère pas l'encaissement lui-même, il peut faire un second barrement au nom d'un autre banquier.

Sont seuls considérés comme banquiers, pour l'application du présent article, les commerçants payant patente de banquier.

Le chèque peut être revêtu par le tireur, ou par le porteur, de la mention "non négociable." Cette mention n'empêche pas la cession du chèque, mais elle met obstacle à ce que le cessionnaire, même de bonne foi, ait plus de droits que son cédant.

[No. 310, Sénat. Année 1907. Session extraordinaire. Annexe au procès-verbal de la séance du 29 novembre 1907.]

*Rapport sommaire fait au nom de la 5<sup>e</sup> Commission d'initiative parlementaire (année 1907),<sup>1</sup> chargée d'examiner la proposition de loi de M. Antony Ratier, concernant les chèques barrés et les chèques non négociables, par M. Genet, Sénateur.*

MESSIEURS:

Notre honorable collègue, M. Antony Ratier, a déposé une proposition de loi ayant pour objet de compléter la loi du 14 juin 1865 sur les chèques, en comprenant, dans les dispositions de l'article premier de cette loi, le chèque barré. Ce genre de mandat tire son nom de deux barres transversales dont il est revêtu par le tireur ou par un endosseur.

<sup>1</sup> Cette Commission est composée de MM. Huguet, président; Catalogne, secrétaire; Daumy, Genet Lordereau, Le Cour Grandmaison, Delobea, Guillaume Pouille, Vagnat, Dufoussat, Fortier, de Las Cases, Halgan, Edme Plot, Charles Riou, Crépin, Chaumlé, Jouffray. (Voir le no. 470, année 1906.)

Le chèque barré n'est payable que par l'intermédiaire d'un banquier, mais lorsque le nom d'un banquier est inscrit entre les deux barres transversales tracées sur la valeur, ce banquier seul peut en opérer l'encaissement. Il y a là une garantie de sécurité contre la perte ou le vol, que ne présente pas le chèque ordinaire. La sécurité est encore plus complète si le chèque barré est revêtu de la mention "non négociable." Malgré cette mention, le chèque n'en reste pas moins cessible, mais aux risques et périls du cessionnaire qui s'exposerait, en le recevant d'un porteur de mauvaise foi, à être tenu de le restituer à son véritable propriétaire. L'active circulation des chèques a amené chez nos voisins les Anglais, dont nous ne saurions trop louer l'ingéniosité commerciale, à adopter ces mesures. C'est à leur exemple que la loi du 14 juin 1865 a établi les dispositions destinées à favoriser et développer l'usage du chèque, à lui donner une existence légale, c'est encore à leur exemple que l'auteur de la proposition de loi vous demande le perfectionnement de cet avantageux mode de paiement.

Il n'entre pas dans le cadre de ce rapport d'exposer les avantages considérables résultant, pour le commerce et l'industrie, des dépôts de fonds en compte courant dont le chèque est l'instrument de service.

Grâce au chèque, dont l'usage a été lent à s'établir en France, grâce surtout au perfectionnement proposé, le paiement en numéraire, qui est encore, chez nous, à peu près la règle générale, deviendra l'exception; les capitaux employés aux paiements trouveront, groupés par les banques de dépôts, un emploi productif qui leur échappe aujourd'hui.

A l'appui de ces considérations, il me suffira de citer, après M. Antony Ratier, les résultats obtenus en 1904 par le "clearing house" de Londres et par celui de New York, qui compensèrent: le premier, deux cent soixante quatre milliards de francs; le second, trois cent quarante-cinq milliards.

La proposition de loi de notre honorable collègue a paru à votre commission digne de retenir votre attention; en son nom, j'ai l'honneur de vous prier, Messieurs, de vouloir bien la prendre en considération.



#### IV.—“THE INTERNATIONAL CHECK.”

[From the London Economist, Aug. 20, 1910.]

If the nineteenth century was preeminently the century of national movements, the twentieth is likely to be the era of internationalism. We live, particularly in the summer months, amid a round of international conferences, at which representatives of the nations gather together to discuss not only scientific questions, but also practical measures of common concern. A notable gathering of the kind assembled in London during the first week of the month for the Twenty-sixth Conference of the International Law Association. The objects of the association are to reform and unify the law of nations, and its membership consists not only of judges and lawyers of the chief States of Europe and America, but also of shipowners and men of business, who temper the ideas of theorists by their experience of affairs. Hence there is a refreshing atmosphere of actuality about its proposals, and in the sphere of maritime law it has formulated draft codes, such as the York and Antwerp Rules of General Average, which have received international validity. In several instances the uniformity which is prepared at its conferences has been afterwards sealed by official conventions, signed by representatives of the Governments. The law of shipping and carriage by sea is now fast approaching unification, and of recent years the association has directed its attention toward another branch of mercantile law—the law of bills of exchange—in which uniformity is equally desirable. At its last conference at Budapest it adopted a number of rules, which were submitted to the international convention upon the matter, formed of official representatives of the leading States, who met at The Hague this year and have adjourned their deliberations till next autumn. A prominent place was naturally given to the subject on the program of the London conference; after it had discussed several topics of high political and social importance, such as the “declaration of London” and “workmen’s compensation,” it devoted most of the final sitting to the further consideration of the “law of bills.”

At Budapest the conference was concerned with bills of exchange in general, at London more particularly with checks, which are, of course, subject both in England and other countries to special rules. For over half a century they have been here the chief form of commercial currency, and they are rapidly becoming so abroad; so that, in the interests of international commerce, it is eminently desirable that the rules governing their formal validity should be uniform. At present there are considerable differences between the Anglo-American and the continental laws. The former, as is its habit, allows much more freedom to the commercial community in the form of its instruments and adopts the practices which that community has devised for security in their employment. The latter imposes specific requirements as to form and has not fostered the same flexibility in

usage. Thus the laws of Germany and Austria-Hungary require the check to be described as such upon its face, with a reference to the funds which the drawer has standing to his credit at the bank, while by the law of France the date must be written in words by the drawer and the omission of the words "to order" makes the check payable only to the drawee. It is obvious that if the check is to be made more adaptable to the needs of international commerce reform of the law must be by way of reducing formalities, and it is obvious, too, that as England is the clearing house of the world's banking business an international rule must to a large extent recognize and give effect to our practice. On the other hand, we must expect to give up a few of the idiosyncrasies which have found their way into our law, but lack a sound basis either in reason or convenience. The discussions that took place and the proposals which were adopted at the conference illustrate these tendencies. Dr. Sichermann, of Hungary, who introduced the subject, had prepared a body of draft rules which, while not purporting to constitute a complete international law of checks, would do away with a number of national differences. The proposals were referred to a committee of international experts, including Mr. Justice Phillimore, Dr. Ernest Schuster, and Dr. Meyer, who submitted to the conference a scheme based upon them. The scheme provides (1) that it shall not be obligatory (*a*) to insert into the context of the check an indication either of the account to be debited or of the balance out of which the payment is to be made, (*b*) to write the date all in letters or in the hand of the writer of the context; (2) that the check shall be payable upon demand only, shall be dated, and shall be deemed payable to order, unless there are express words prohibiting transfer; (3) that the English provisions relating to crossed checks are to be maintained and should be accepted generally. These rules adopt either the existing English law or the regular English practice, for though legally a check need not be dated, in effect bankers require that formality. Modification of the English rule, however, is introduced by the recommendation that internal checks shall be presented for payment within a fixed period limited by the law of each country and foreign checks within an interval fixed in relation to this period. Under our existing law a check must be presented within a reasonable time after issue to make the drawer unconditionally liable; but though this elasticity has advantages, it tends to uncertainty, and the Institute of Bankers has recommended the continental system of fixing a definite limit. Again, it is proposed that the duty and authority of the banker to pay should be terminated by the drawer's countermand of payment, but not by notice of the drawer's death. The first part of the rule adopts, the second part negatives, the English law; but here, too, our peculiar practice, based on a judicial decision of 1822, has been generally recognized as unreasonable and inconvenient, and there would be a general gain in abandoning it. It is noteworthy that two proposals submitted to the committee requiring the insertion of the word "check" or its equivalent in the instrument and the specification of the place where the check is drawn were not adopted. Neither of these forms is required in England, and to require them would mean such a grave inconvenience to the habits of our banks and business people generally that the change would have little chance of acceptance.

It is hoped that these rules for checks, which will be laid before the international convention at The Hague next year, will be approved by the official representatives. There is much to be said against the feasibility of a universal code for bills of exchange; the sacrifices required of various countries are too great; the national differences still too large to be immediately dissolved. To take but two points, the rules with respect to notice of dishonor and the right of recourse (for nonacceptance) are so contrasted in Anglo-American and Continental law that agreement would be difficult to obtain. Approaches may be made toward uniformity, and a general understanding may be reached upon the essential parts of a bill, but the fulfillment of the larger scheme will probably have to wait. The reasons which call for the unification of the law of checks are stronger, and the chances of attaining it are greater. By the simplicity of their form and the combined ease and security of their transmission checks are becoming a favorite means of settling international liabilities. Like the telegraphic transfer, they require a quicker dispatch than bills, and there is the greater need for eliminating legal questions as to discrepant foreign laws in dealing with them. If the governments can not formulate one law covering the whole range of bills of exchange, they would render a great service to international trade by adopting general rules for checks on the lines recommended by the London conference. One result of such an understanding would be to increase the use of checks in international exchange. For some transactions, indeed, the time bill is the natural means of payment, but if one law regulated all drafts on bankers they might replace bills in a number of cases. This change, again, might have a vast effect upon the international money market, as the substitution of the check for the bank note had in England upon her commercial development. One thing, however, seems certain, that any steps toward unification, based, as it largely must be, on the acceptance of our practice, is likely to consolidate and strengthen England's position as the world's clearing house.



## V.—THE UNIFICATION OF THE LAWS CONCERNING CHECKS.

[Read at the Guildhall on Aug. 5, 1910, at a conference of the International Law Association, by Dr. Bernat Sichermann.]

The labor of more than 30 years has not been in vain. Thanks to the perseverance of the International Law Association and its learned members, the unification of the laws concerning bills of exchange is no longer a utopian phantom smiled at by skeptics, but is a matter of reality which the Governments of all civilized nations are now dealing with.

Having reached this stage, I think that there is no need for our private cooperation in this line, for now, as the Governments have assumed the work officially, their honor is in a measure pledged for an early and thorough success.

Thus the International Law Association may with due satisfaction over the results gained, devote its motive force to new tasks of no less importance.

All negotiable instruments, of course, have the tendency to cross the borders of their home country, but next to bills must stand checks, of which a daily increasing quantity is fluctuating between the divers countries and forming already a mighty means of regulating international liabilities. So far has this intercourse developed, indeed, even on the continent, that, as I was told by some managers of great banking corporations, they do not find as great an inconvenience in the large discrepancies between the laws on bills as in the difficulties arising out of the differing check laws; for, as they put it, checks want a more quick dispatch than bills; in the mighty rush of daily business the clerk to whom the settling of these instruments is trusted ought only to look at the balance of the customer and his signature, and not ponder over any juridical questions and possible discrepancies of foreign check laws.<sup>1</sup>

Of these facts the Governments are fully aware, and do not therefore refrain from extending the work of unification to this instrument too; on the contrary, several Governments—the Hungarian among them—expressed their wish to have this work done as soon as possible, but for want of due preparation could not make any proposition in this line, and thus the conference at The Hague had to limit its discussion to bills of exchange only.

Considering these circumstances, I am of opinion that the International Law Association—which has acquired such great merit by preparing the matter of bills—might do a useful work by assuming the preparatory work concerning checks too, and, with due regard to the principal discrepancies between the various laws, might get up resolutions similar to those contained in the Budapest rules.

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<sup>1</sup> The banks in Budapest are just now applying to the Government to urge the unification of check laws.

To this work I should like to contribute some views on this matter, owing to the fact that as a member of the check conference held at Budapest in 1907 I had an opportunity to acquire some experience as to where the greatest difficulties might be hidden.

The divers laws agree in regarding the check as a negotiable instrument of an abstract and formal nature much akin to the bill of exchange; it matters little that one country deals with it in a special law,<sup>1</sup> another in the law of bills of exchange,<sup>2</sup> a third in the commercial<sup>3</sup> or in the civil law,<sup>4</sup> because on the whole they agree that in general the rules of the law relating to bills of exchange are to be applied to checks, with modifications deemed necessary by reason of the peculiar nature of the instrument.

Therefore the discrepancies arising out of the divergencies of the divers laws of bills of exchange—the same being the object of special unifying negotiations—may conveniently be left out of consideration here.

The special provisions deemed necessary by most of the check laws deal in the first line with the requisites of the check instrument.

Some of the continental laws (in Austria, Germany, Hungary, Switzerland, Scandinavia and Japan) require the check to be described as such in the context of the instrument, a requisite not wanted by the law in Belgium, France, Great Britain, Italy, the Netherlands, Roumania, etc.

The first-named countries will—and, so far as I am informed, Austria, Germany, and Hungary must—adhere to this requisite, because there are other negotiable instruments of much the same tenor—e. g., commercial assignments—to which they do not desire to extend the peculiar provisions of the check law; further, because the revenue departments with regard to the stamp duties imposed on checks—trifling as compared with those on other negotiable instruments—deem it necessary to maintain this requisite as the most suitable one for the distinguishing of this from any other negotiable instrument, and in general there is no arguing with revenue departments.

Therefore in Italy Prof. Vivante<sup>5</sup> wishes the altering of the existing law accordingly, and though this means a new requisite from the standpoint of the British as well as the French law, and requisites should rather be diminished, in my humble judgment—if we ever desire unification on this matter—British, etc., law ought to yield in this question and accept this requisite.

After all no unification can be conceived without some sacrifice, and that party has to yield which sacrifices least; well, in this question it is only a slight sacrifice that British trade has to make, checks being made usually on printed forms in which the word “check” is easily interpolated and very often used also nowadays.

<sup>1</sup> Austria, Apr. 3, 1906; Belgium, June 20, 1873; Denmark, Apr. 23, 1897; France, June 14, 1865, Feb. 19, 1874; Germany, Mar. 11, 1908; Hungary, LVIII act, 1908; Norway, Aug. 3, 1897; Sweden, Mar. 24, 1898. (Both the latter and the Danish (Scandinavian) are much the same.)

<sup>2</sup> Great Britain, bills of exchange act, 1882; New York (etc.) an act in relation to negotiable instruments, May 19, 1897.

<sup>3</sup> Japan, Commercial Code, June 10, 1899, secs. 530–537; Italy, Commercial Code, Apr. 2, 1882, secs. 339–344; the Netherlands, Commercial Code, 1838, secs. 221–229; Portugal, Commercial Code, June 28, 1888, secs. 340–343; Roumania, Commercial Code, May 10–22, 1887, secs. 364–369; Spain, Commercial Code, Aug. 22, 1885; Bulgaria, Commercial Code, May 18–30, 1897.

<sup>4</sup> Switzerland, Obligationenrecht, June 14, 1881.

<sup>5</sup> Trattato di Diritto Commerciale, III, 1894.



A peculiar requisite necessitated by the laws of Austria, Germany, and Hungary, is the reference to the funds the drawer ought to have at his banker—that is, a request to pay out of the sum standing at the drawer's credit. According to these laws an instrument without the phrase "pay out of my balance," or amounting to it, is void, at least not a check.

There is no need for much arguing to show that this allusion to the funds of the customer has no practical value at all, and is in no case of such an importance as to encumber for its sake the instrument with a new requisite; moreover, in many cases this allusion answers not the postulate of truth, as checks are often drawn and duly paid on account of a third person, or on account kept current without funds with regard to bills, etc., deposited as a security for the balance, or, exceptionally of course, though the balance has turned in favor of the banker.

Besides, the requirement of this particular is contradictory to the German system of negotiable instruments which otherwise from principle avoids in the instrument any allusion to the relation between drawer and drawee.

The lawmakers in Austria, to whom we are indebted for this requisite, deemed it necessary to remind the drawer by this phrase not to overdraw his account, but I think the possibility that some absent-minded customer might be saved by this phrase from the consequences of his gross negligence, does not compensate for endangering general intercourse by a requisite, the absence of which may be easily overlooked even by careful people.

The continental laws require further that the instrument should be dated, and some necessitate the specifying of the place where it is drawn.<sup>1</sup>

French law<sup>2</sup> goes even so far as to require that the day of dating should be written "en toutes lettres" by the very hand of the person who wrote the check, whereas the Swiss<sup>3</sup> and Spanish<sup>4</sup> laws rest content by requiring that the day of date should be written in words.

British law on the contrary, though looking at the date as a material part of the instrument,<sup>5</sup> holds a check not invalidated by the reason that it is not dated or does not specify the place where it is drawn.<sup>6</sup>

At the conference at Budapest I myself recommended the English standpoint and the conference accepted it, supplementing the seventh rule accordingly. Since then, taking part in the preparatory work for the conference at The Hague, I had to look at this question from several points, and had to allow that what would appear to be practicable within the borders of one country, might lead to great inconveniences in general international intercourse.

Considering the place where the instrument is drawn, there is firstly the legitimate interest of the revenue department to get the stamp duties of all instruments drawn on its territory; wherefore it justly claims that any instrument ought to show on its face the place where it has been created, all the more as in most countries the stamp

<sup>1</sup> This latter is explicitly required by Austrian, French, German, Hungarian, and Swiss law.

<sup>2</sup> Loi du 19 Février, 1874, §5.

<sup>3</sup> Sec. 839.

<sup>4</sup> Sec. 535.

<sup>5</sup> Bills of exchange act 64.

<sup>6</sup> Bills of exchange act, 8.

duties vary when the check is payable at any other place than where it has been drawn (e. g. France<sup>1</sup>) or when payable abroad (e. g. Austria, Hungary,<sup>2</sup> etc.).

Considering how very hard Governments are on financial questions, even if these could rightly be objected to, there is no hope to conquer their opposition in matters of a legitimate interest.

Therefore, if we really desire that our work shall not fail, we ought to satisfy these demands, and we can do it all the more, as the interests of the parties liable on the check as well as of those entitled by it are also better served by the specifying of this place, and as people commonly are in the habit of writing on the instrument the place where they draw the check.

The name of the place where the bill is payable is not regarded as an essential requisite by the continental laws either; in general *subintelligitur* the residence of the drawee if his address be given in the check, else the place of drawing. This last provision differs, of course, from British law, but is not of practical importance, as there perhaps never is drawn a check without giving the address of the drawee.

Concerning the date, there are again revenue departments of several countries which persist in having the check dated, for they fear lest by want of date these instruments might be used instead of bills and in this way diminish the revenues.

This anxiety has, of course, no foundation, for checks being payable on demand, the holder will, in his own interest, try to cash it as soon as possible, whether the check be dated or not.

But where there is a fixed period for presentment—and such all the continental laws have—it is necessary to fix the starting point of this period on the instrument itself, and as it can not be denied that the banker and the whole mercantile community on the Continent decidedly prefer this fixed period of presentment it must be allowed that the qualifying of the date as an essential requisite answers their views.

And as the Council of the Institute of Bankers (in London), in its most valuable memorandum submitted to the board of trade in July, 1908, allows (p. 7) that with regard to limitation of time for presentment “this is a point on which the British law might give way to the foreign;” that is, accepting definite limits instead of the “reasonable time,” it seems to me that the council in objecting to the date of issue as an essential requisite have overlooked that, without a date, no definite limit of presentment could be fixed, at least not in the obvious manner strictly wanted by all interested parties.

Besides, to quote Mr. Barnard Byles: “In practice \* \* \* it is manifestly irregular to issue a bill undated, and in the case of checks the bankers on whom they are drawn do, in fact, decline to honor undated checks, though the law does not discriminate between bills and checks in this regard.”<sup>3</sup>

And, moreover, to remove the scruples of Mr. Byles expressed in his paper, no peculiar harm can be done to the holder getting a check without having these particulars specified, for by general usage or

<sup>1</sup> 10 and 20 centimes.

<sup>2</sup> 4 and 10 fillér or Heller; 10 fillérs=1 penny.

<sup>3</sup> W. B. Byles's paper read at the Budapest conference, on the “Unification of the law of bills of exchange.”

express provisions of the divers laws the rule of section 20 of the British Code, according to which "when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit," may also be applied to checks.

Of course there is no need to go as far as the French law and require that the day of date may be written in words and by the person who wrote the check, as this outcome of an exaggerated anxiety of the revenue department really means an unnecessary, onerous, and most dangerous increase of formalities.

The words "to order" do not belong to the category of essential requisites even in French law, though the latter still demands them on bills. But, nevertheless, the omission of these words has, according to French law, and, I am sorry to say, according to Hungarian and Austrian law, too,<sup>1</sup> the effect of preventing the further negotiability of the check, whereas under British law, as well as under German, etc., a check expressed to be payable to a particular person is payable to such person or to his order unless there are express words prohibiting transfer.

No great discussion is needed to show that the restriction imposed by French law and its followers is, to say the least of it, undesirable. It is a mistake of legislative technic to set the rule from abnormal cases.

Great differences exist between the divers check laws with regard to the limitation of time for presentment.

Under British law the check must be presented for payment within a reasonable time after its issue in order to render the drawer liable unconditionally and within a reasonable time after its indorsement in order to render the indorser liable at all, the discharge of the drawer depending upon the fact whether and to what extent he has sustained actual damage through the delay.

Under continental law the check is, in fact, a draft payable at a fixed period after date, which period varies in some countries<sup>2</sup> according to whether the check is both drawn and payable at the same place or not; in other countries as to whether the instrument is drawn inland or abroad, and here again according to the distance of the foreign place where the check was drawn.<sup>3</sup> There is no doubt that the provision of the British code comes nearest to the ideal solution of consequent questions, as it empowers the tribunal to weigh the facts of the particular case and thus to give way to equity; but nevertheless the daily increasing currency of negotiable papers recoils from such elasticity and claims for clear guidance, for certainty, even at the risk

<sup>1</sup> And so the Spanish law, sec. 535.

<sup>2</sup> Belgium 3 and 6, France and Switzerland 5 and 8, Spain 5, 8, and, if payable abroad, 12, Italy 8 and 14, Bulgaria, Portugal, and Roumania 8 and 15 days, Denmark, Norway, and Sweden 3 and 10 days (in normal cases). The provision of the Austrian law is a most intricate one; in general the limit for presentment is 3 and 8 days, but for inland checks drawn in Istria and Dalmatia and the islands belonging to them and payable in other parts of the Empire or vice versa—and further for foreign checks—both being required to be forwarded to the place of payment within 5 days from date and presented there within 5 days from the day of arrival. Japan states in any case a period of a week, the Netherlands 10 days from date to make the drawer liable and 3 days from delivery to make the indorser liable.

<sup>3</sup> In Germany and Hungary 10 days are limited as time for presentment for inland checks, whereas for checks drawn abroad (1) three weeks are allowed in Europe (except for Iceland and Faroe), (2) one month at the coasts of Asia and Africa, along the Black Sea and the Mediterranean, or at the islands adjacent to them, (3) two months in the United States of America, Canada, Newfoundland, Mexico, at the Azores, Canaries, Cape Verde Islands, and at Madeira. (4) three months if drawn elsewhere.

of getting injured in some relatively rare cases by want of equity, and the tribunals themselves are afraid of using their unlimited power, and little by little set rules the legislator wished to avoid.

Thus it turned out that as far as I am informed, even under British law, there have developed by usage of the courts some quite strict rules as to the periods within which the check ought to be presented.<sup>1</sup> On the other hand, the Institute of Bankers, as quoted above, has found it advisable to recommend the continental system of fixing definite limits for presentment. Therefore I am of opinion that if any international arrangement on this point should be wanted, it can not be attained but by following a system that approximates the continental as nearly as possible.

I mean approximation to and not simple acceptance of the continental system, as none of the continental laws answer thoroughly the needs of international currency.

There are not many words to be wasted about the inconvenience of the laws stating a difference between checks payable at the place where drawn and checks payable at another place. The lawmaker was obviously mistaken, thinking that checks drawn at the place where the drawee (the banker) resides are only used at that very place. Besides even the longer period of 15 days is far too short to cover a great, e. g., a trans-Atlantic, distance.

The German and Hungarian laws, not following in this line the Austrian, have, as shown above, avoided this mistake and limit only a varying time of presentment for foreign checks, and that according to the distance of the place abroad (where the check was drawn) from that in the inland place (where the check is payable).

This appears satisfactory from the German or Hungarian point of view, but not quite practicable in an international law of universal tenor, for a place that is very distant to Berlin might be quite near to New York; therefore a fixed period in the manner of the German law could be accepted only in case of establishing in the international law for each country special zones of distances, by which the law would gain a rather Babylonian feature.

The international law could hardly limit the time for presentment in a general way, even in the case of inland checks, e. g., five days might be too much for Switzerland and far too short for Russia.

Thus, in my opinion, any attempt to establish complete uniformity as to the length of time for presentment with regard to inland checks would meet with insuperable difficulties; therefore the international law must rest content with a declaration that each country ought to limit the time for presentment with regard to inland checks to a fixed period, which should have to run from the date of the check, and leave it to the territorial law to limit the length of this time.

Further, as to foreign checks, the international law ought to confine itself to adding to the period limited for inland checks as much time as is necessary for sending the check in the usual way from the place where it was drawn to that of payment, for only by this method can the holder of a foreign check be said to be in a situation approximately the same as that of the holder of an inland check.

True, that a provision conforming to this leaves an essential point of the computation in uncertainty, but nowadays postal communica-

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<sup>1</sup> See Byles on Bills, XVI, edition 22.

tion has become so regular, even with places situated on the outskirts of the civilized world, that in reality this uncertainty may be considered as trivial, and the questions of fact arising out of it can be easily solved upon evidence of post offices.<sup>1</sup>

The provisions of the international law relating to the limitation of time for presentment ought to be made therefore in a way that should form a compromise between the British and the continental systems.

According to the Austrian, German, and Hungarian law, the time limited for presentment has a greater importance than in any other country, for by a strange provision of these laws a countermand of payment given by the customer is, or rather ought to be, inoperative within the time for presentment.

The lawmakers in Austria and Germany could not emancipate themselves from the fear that but for this provision the holder of the check would run the risk of being cheated out of his rights by a countermand given by the drawer.

This provision is the more singular as under the laws above named the check does not operate as an assignment of the sum for which it is drawn (as it does in France and in Scotland) and, consequently, the holder of the check has in no case any claim against the drawee (banker), though the banker may have in his hands funds available for the payment of the check presented, and therefore the holder has also no remedy if the banker choose to accept the countermand of his customer. So it turns out that this provision, meant as a protection to the holder, is only a source of trouble for the banker, who, in case of countermand, comes between two fires and is at a loss to whom he shall have regard, whether to his customer or to the holder.

The interest of the banker moves him, of course, toward his customer, especially if the same live abroad in a country the law of which acknowledges the customer's power of countermanding, but there is already a professor in Göttingen<sup>2</sup> who argues that by virtue of this provision and sections 826 and 823 of the German civil code the holder has a claim against the banker, and as German tribunals are very much disposed to attach weight to professors' opinions, there very likely will be trouble. I wonder how the German banker will behave should his English customer give a countermand and the German holder insist upon receiving immediate cash for the same check; and—I am sorry for the banker.

I think that here, on the ground on which the modern check has developed in such an admirable way, there is no need to explain that this provision, unknown even in France, can not be accepted in an international law; the basis of a sound relation between customer and banker, banker and holder, is the principle that the customer is the master of his account<sup>3</sup> and that the banker—there being no privity of contract between him and the holder—has neither the duty nor the authority to examine whether the customer had a good bona fide reason to give a countermand or not.

<sup>1</sup> A similar provision is to be found in the Scandinavian check laws (sec. 10), according to which, in case the forwarding from the place of drawing to that of payment should occupy more than five days, presentment shall be made within five days, running from the last day of the time necessary for that forwarding.

<sup>2</sup> Dr. Otto Schreier, "Der Scheck im Konkurs des Ausstellers" (*Zeitschrift für das gesamte Handelsrecht*, LXVI, Bd. 349).

<sup>3</sup> Vivante (*Trattato di Diritto Commerciale*, III, 1411) uses the very words: *Padrone del credito disponibile presso il trattario resta il traente, anche dopo l'emissione dell' assegno, fino al pagamento.*



And therefore I fully agree with the manager of a clearing bank, who being applied to had the kindness to give an informative letter on this question, and wrote, "It would appear to me highly desirable that the drawer of a check should have the power to instruct his banker to stop payment of it should he have adequate reason for doing so," and, "We do not find that the possession of this power has been found to restrict the free use of checks."

For these reasons the principle<sup>1</sup> set down in the first part of section 75 of the British code ought to be maintained, and, to my thinking, will surely be accepted by an international conference.

But the continental delegates might strongly object to the second part of this very section, by which notice of the customer's death should operate as a countermand.

It is a rule continental laws do not acknowledge;<sup>2</sup> Austrian, German,<sup>3</sup> Hungarian law expressly exclude it. Though on the whole the continental theory allows that the relation between the customer and his banker is much the same as that between the mandans and mandatarius, in consequence of which, according to Roman law, the death of the customer ought to be regarded as revocation of the authority given to the banker. However, the continental law merchant has not accepted this consequence; it states that, in the absence of a contrary disposition, the mandatum does not end with the life of the mandans, and it is this line the continental laws of check have taken, with due regard to the exigencies of the currency of negotiable instruments.

I do not know the case of *Rogerson v. Ladbroke*, that<sup>4</sup> has given rise to the view the provision of the British code is based upon; the particular facts of the case might have been of such a kind as to determine the authority of the banker to pay the check presented to him after the death of his customer; but it seems rather too hard to make a general rule of it and to stop the payment of a check *ex lege* in consequence of an accident happening in the person of the drawer, an accident no human being can avoid; it throws an element of insecurity into the currency of negotiable instruments, which can not be paralyzed by the utmost care of the holder, and might cause great inconveniences to the holder as well as to the prior parties, not excluding the heirs of the drawer.

I willingly allow that there might be cases in which the heirs of the customer, and perhaps the banker, too, are running some risks in case the banker, though aware of the death of his customer, ought to honor his checks, but the mere possibility of such cases can not be deemed a sufficient reason to shift the risk *ex lege* in all cases to the holder.

Should, through peculiar circumstances, the customer or the banker find it advisable to provide in the sense of the British code, they may do it by special agreement, not prevented even by continental law; but such agreements will remain exceptions, I am sure, for once let it be known that a banker generally does make provisions of this kind, nobody would take checks drawn on this banker.

<sup>1</sup> Whether this rule should be maintained with regard to "limited checks" is a special question of British law, as this sort of checks are not, and for the time being (according to continental law) hardly could be, adopted by continental bankers.

<sup>2</sup> *Vivante*, III, 1427.

<sup>3</sup> *Civil code*, sec. 791.

<sup>4</sup> According to *Chalmers*. (1822. I. *Bingham*, 22.)



Therefore, I am of opinion that this may again be a point on which the British might give way to the continental law.

Though the section 75 of the British code looks as though it enumerated all causes which might operate as a revocation of banker's authority, there is still one not mentioned by the code, but nevertheless acknowledged by English law; I mean to say, the bankruptcy, or rather the notice of an available act of bankruptcy committed by the customer.

But for the French law and its followers, in this point the continental agrees with the English law; the general rule is that where the customer had lodged a sum of money or funds whatever with a banker to meet his drafts or checks, and the customer (drawer) failed, that sum or those funds pass to the bankrupt's trustee, and the banker getting notice of the bankruptcy has henceforth neither the duty nor the authority to pay a check drawn on him by such customer, though the drawing and issuing of the instrument might have been done before the act of bankruptcy.

This rule is either expressly stated by the check laws (e. g., in Austria and Hungary) or the consequence of the provisions of the special statutes relating to bankruptcy.

It is not so, however, with the French law and its followers.<sup>1</sup> According to the practice of the French courts,<sup>2</sup> the bill or check drawn by the customer operates as an equitable transfer of a part of the sum or the funds<sup>3</sup> lodged with the banker to meet these bills or checks, provided the sum or the funds be in the hands of the banker when the bill (falling due) or the check is presented, wherefore the subsequent failing of the drawer can not affect the title of the holder. Thus, under French law, the holder of a check—though after drawing the drawer have committed an act of bankruptcy known to all parties to the instrument—may avail himself of those sums or funds, and the banker has no right to decline to honor his customer's check for the mere reason that he has notice of the bankruptcy committed by such a customer.

There is no doubt that the French practice favors more the interests of the holder, and therefore seems preferable, at least, from the view of the currency of checks and other negotiable instruments, but on the other hand, not taking into account theoretical scruples, the interests of the creditors of the bankrupt drawer are also to be considered, and these interests might be very often and easily injured by the power given to the bankrupt to remove the funds from his trustee in an inconspicuous way by means of antedated bills or checks. For these reasons even countries where the law denies, or rather tries to deny, to the drawer the power of countermanding,<sup>4</sup> do not accept the French view on this matter, nor is there any hope that they would do it for the sake of unification. As for the rest, should the French law not yield in this question, and therefore no unification be attained in this matter, there might be more often an injury sustained by the people living under French law than by the foreigner, for foreign creditors are frequently holders of bills, checks, etc., drawn by the debtor, and so in case of the French drawer's bankruptcy, the foreign creditors of the bankrupt more often than not will get into a better position than the inland creditors of the same.

<sup>1</sup> Belgium: Loi du, 20. mai 1872, secs. 4-6.

<sup>2</sup> Lyon-Caen et Renault, *Traité de Droit Commercial*, IV, 180.

<sup>3</sup> Le porteur est propriétaire de la provision. (Lyon-Caen, IV, 179.)

<sup>4</sup> Austria, Germany, and Hungary.

But even in case of unification on principle in this question, there still will remain a series of differences in detail, e. g., as to what acts shall be deemed as available acts of bankruptcy in this respect, especially whether this rule should apply in the case of actual bankruptcy already, or only in case of bankruptcy judicially ascertained by an adjudication in bankruptcy, and from what time the banker's notice of such an act might be presumed; differences large and important enough, and which probably will not be eliminated forthwith in the international check law itself, but will remain a task to be solved by future negotiations.

Among the risks the currency of checks has to run there stands in the first line the injury caused by checks getting lost or stolen. This risk grows naturally with the development of the international trade and intercourse, and means are sought to avert or at least to diminish this danger. As I take it, there hardly could be imagined a system serving that purpose better than the English system of crossing does.

Singularly enough, the continental and American laws (but for the Scandinavian and Spanish laws<sup>1</sup>) still refrain from adopting it. True, the Austrian, German, and Hungarian laws acknowledge some sort of crossing. According to the section 14 of the German law:

The drawer as well as any holder of the check may by crossing the instrument with the remark "only for bringing into account (*nur zur Verrechnung*)," prohibit the payment of the check in cash. In such a case the drawee is only permitted to take up the check by bringing it into account—which amounts to payment in the sense of this law. This prohibition can not be withdrawn. Acting contrary to it, the drawer incurs liability for the injury caused.

In short, the check turns by this German crossing into an assignment to transfer a certain amount from the account of the drawer to the account of the holder (*Giroanweisung*). Wherefore the holder of a check crossed in this manner can avail himself of it only in case he have an account at the banker drawn, or else he must transfer it to somebody having there an account.

This system of crossing has been introduced by the Reichsbank, establishing many branches throughout the Empire, for the use of its own customers, and was adopted afterwards by the Bank for Austria and Hungary. There is no doubt that this system might be very useful for the customers of these great banks—or any great bank, e. g., the Deutsche Bank, which, according to its report of last year, had 177,000 check accounts—but it is of very little use, or at least inconvenient, to outsiders, and therefore does not answer the needs of international intercourse. So far as I am informed, the Germans are now already aware of the fact that it might have been more to the purpose to adopt the English system; moreover, the latter does not exclude the German and both can be maintained if the bankers of Germany, Austria, and Hungary should insist upon preserving their own system.

In any case it is obvious that with a view to the security of the international currency of checks the adoption of the English system of crossing is an urgent necessity, and if by international negotiations on the unification of check laws nothing could be obtained but an agreement adopting this system, it would be still a success by the initiation of which the association would acquire great merit and

<sup>1</sup> The Japanese law (sec. 535) adopts also the English system.

highly oblige the whole mercantile community and international trade.

Beside the prominent points I have been dealing with, there are, of course, other discrepancies even among the laws belonging to one type, as, e. g., the peculiar provisions of the Austrian and Hungarian law, according to which the indorsement of a check payable to bearer shall be inoperative, or that the holder of the check, though he be guilty of laches, may sue the antecedent parties (even the indorser, and, maybe, also a person transferring by delivery only) on the consideration (the latter only a defense pro tanto to the extent of the damage caused by the laches), provisions from which even the German law has refrained; or the provision of the Italian, Portuguese, and Roman laws, according to which the check may be made payable up to 10 days after sight; or the singular British rule, according to which the Crown can not be guilty of laches; or the certifying of checks, according to section 323 of the New York law on negotiable instruments,<sup>1</sup> quite unacceptable by European legislatures with due regard to the privileges of their banks of issue; but these are all of much less importance, simple details which might be settled, I am sure, without difficulty.

On the whole, the reconciliation of the discrepancies pointed out in this paper does not present the appearance of a work that should meet with insurmountable obstacles; of course it is a matter of give and take, but demands much less sacrifice than the unification of the laws relating to bills; and as each of these discrepancies means a great clog hindering the development of international currency and might give rise to international discordancies in the removing of which the International Law Association has acquired and is still acquiring so great merits, I beg to present these suggestions for consideration, and, following the method which proved so useful at the Budapest conference on the matters of bills of exchange, I beg to propose:

That this conference consider an international agreement on the principal points of law relating to checks as having become an urgent necessity and therefore appoint a small committee to examine the questions raised on these points, to formulate a scheme of adequate resolutions, and to report the results of their deliberations before this conference closes.

Whereas, to the committee thus appointed, I take the liberty of submitting the following scheme:

I. To constitute a check, it shall be necessary to insert in the context of the instrument the word "check" or its equivalent.

II. It shall not be obligatory to insert into the context of the instrument an indication either of the account to be debited with the amount or of the balance out of which the payment is requested.

III. The check shall be payable on demand only; it shall be dated, and specify the place where it is drawn.

IV. It shall not be obligatory to write the day of date all in letters nor to have it written by the hand of the writer of the context.

V. A check, though payable to a particular person, shall be deemed negotiable to order, unless there are express words prohibiting transfer.

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<sup>1</sup> SEC. 323. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

VI. The check shall be payable at the residence of the drawee, if his address be given in the instrument, else at the place where the check is drawn.

VII. Inland checks shall be presented for payment within one fixed period limited by the law of the particular country, and this period shall run from the date of the check.

Foreign checks shall be presented for payment within the period limited for presentment of inland checks in the country where the check is payable—running from the last day of the time necessary for forwarding the check in the usual way from the place where it is drawn to the place where it is payable.

VIII. The duty and authority of the drawee to pay the check shall be determined by the drawer's countermand of payment, as well as by the notice of an available act of bankruptcy committed by the drawer, but not by the mere notice of the drawer's death.

IX. The provisions of the British bills of exchange act relating to crossed checks are to be maintained, and it is highly desirable that they should be accepted generally.

X. An acceptance written on a check shall be inoperative.

**VI. RULES RECOMMENDED BY THE INTERNATIONAL LAW ASSOCIATION, AT THE LONDON CONFERENCE, 1910.**

I. It shall not be obligatory to insert into the context of a check an indication either of the account to be debited with the amount or of the balance out of which the payment is requested.

II. A check shall be payable on demand only and shall be dated.

III. It shall not be obligatory to write the day of date all in letters nor to have it written by the hand of the writer of the context.

IV. A check payable to a particular person shall be deemed payable to order, unless there are express words prohibiting transfer.

V. Inland checks shall be presented for payment within a fixed period limited by the law of the particular country, and this period shall run from the date of the check.

Foreign checks shall be presented for payment within the period limited for presentment of inland checks in the country where the check is payable—running from the last day of the time necessary for forwarding the check in the usual way from the place where it is drawn to the place where it is payable.

The consequences of nonpresentment in time are regulated by the national law of the place of payment.

VI. The duty and authority of the drawee to pay a check shall be determined by the drawer's countermand of payment, but not by notice of the drawer's death.

VII. The provisions of the British bills of exchange act relating to crossed checks are to be maintained, and it is highly desirable that they should be accepted generally.





## VII. QUESTIONNAIRE RELATIVE TO THE CHECK.

### QUESTIONNAIRE.

1. La loi<sup>1</sup> doit-elle contenir une définition du chèque ou suffira-t-il qu'elle fixe les conditions essentielles à remplir pour qu'un effet soit considéré comme chèque?

2. La loi doit-elle exiger—comme conditions essentielles—que le chèque contienne:

(a) Le mot chèque ou un terme équivalent dans la langue du pays où il est émis.

(b) L'indication du lieu et de la date de l'émission (avec ou sans la disposition que la date du jour de l'émission doit être écrite en toutes lettres par celui qui a écrit le chèque).

(c) L'indication du tiré.

(d) L'indication de la personne à laquelle ou à l'ordre de laquelle le paiement doit être fait, à moins que le chèque ne soit payable au porteur.

(e) Le mandat au tiré de payer une somme déterminée avec ou sans indication des fonds portés au crédit du compte du tireur et disponibles.

(f) La signature du tireur?

3. Doit-on admettre:

(a) Ou que le chèque peut être tiré sur une personne quelconque.

(b) Ou bien qu'il ne peut être tiré que soit sur un banquier, une banque ou un établissement appartenant à une des catégories spécialement indiquées par la loi, soit sur un commerçant.

(c) Ou qu'il ne peut être tiré que sur un banquier, une banque ou un établissement appartenant à une des catégories spécialement indiquées par la loi?

Dans chacun de ces deux derniers cas, quelles sont les catégories d'établissements à indiquer par la loi?

4. Le chèque pourra-t-il être émis à l'ordre du tireur lui-même?

5. La loi doit-elle autoriser le barre-ment (crossing) d'un chèque, en distinguant entre—

(a) Le barre-ment spécial.

(b) Le barre-ment général.

Et en réglant la forme et les effets de chacune de ces manières de barre-ment?

1. Should the law<sup>1</sup> contain a definition of the check, or is it sufficient that it fix the essential conditions to be fulfilled in order that an instrument may be considered as a check?

2. Should the law require, as essential conditions, that the cheque contain:

(a) The word check, or an equivalent term in the language of the country where it is issued.

(b) Indication of the place and of the date of issue (with or without provision that the date of the day of issue shall be written entirely in words by the party who has written the check).

(c) Indication of the drawee.

(d) Indication of the party to whom, or to whose order, payment should be made, unless the check be payable to bearer.

(e) The order to the drawee to pay a sum certain, with or without indication of available funds standing to the credit of the drawer.

(f) The signature of the drawer?

3. Should it be permitted:

(a) Either that the check may be drawn upon any party whatever.

(b) Or that it may be drawn only on a banker, a bank, or an institution belonging to one of the classes specially indicated by the law, or upon a merchant.

(c) Or that it may be drawn only upon a banker, a bank, or an establishment belonging to one of the classes specially indicated by the law?

In each of these last two cases, what should be the classes of institutions to be indicated by the law?

4. Should it be permitted to issue a check to the order of the drawer himself?

5. Should the law authorize the crossing (barre-ment) of a check, distinguishing between—

(a) Special crossing.

(b) General crossing.

And should it regulate the form and effects of each of these methods of crossing?

<sup>1</sup> Dans ce Questionnaire le mot loi est employé pour indiquer la loi uniforme.

<sup>1</sup> In this Questionnaire, the word law is employed to indicate the uniform law.

Dans le premier cas, le chèque ne sera-t-il payable qu'à un banquier désigné; dans le second cas, qu'à un banquier quelconque?

6. Si la loi admet et règle le barrement, doit-elle accorder cette faculté seulement au tireur ou bien également à un endosseur ou au porteur, soit que le tireur n'ait pas barré le chèque, soit que le tireur ait apposé un barrement général et que l'endosseur ou le porteur désire le barrer spécialement?

7. La clause "Nur zur Verrechnung" (loi allemande du 11 mars 1908 sec. 14) doit-elle être reconnue et réglée par la loi et avec quel effet?

8. La loi doit-elle prescrire:

(a) Que le lieu indiqué comme le domicile du tiré est censé être le lieu du paiement, si le chèque n'en indique pas un autre.

(b) Que si la somme à payer est indiquée tant en toutes lettres qu'en chiffres et que ces deux indications ne sont pas identiques, la somme écrite en toutes lettres doit être considérée comme la vraie, et que, si la somme à payer a été indiquée plusieurs fois soit en toutes lettres soit en chiffres, c'est la somme la moins élevée, qui, en cas de différence, est censée être la vraie?

9. (a) Le chèque ne peut-il être payable qu'à vue?

Et, en ce cas,

(b) Le chèque, contenant une autre indication du temps du paiement, doit-il néanmoins être considéré comme payable à vue, ou doit-il être considéré comme nul?

(c) La loi doit-elle admettre le chèque payable à un certain délai de vue, en fixant le maximum de ce délai? (système du code de commerce italien).

10. La loi doit-elle, en ce qui concerne

La forme de l'endossement,

La clause qui interdit l'endossement,

Les droits qu'on acquiert par l'endossement, et

La légitimation du porteur,

Renvoyer aux dispositions correspondantes de la loi uniforme relative à la lettre de change et au billet à ordre?

11. (a) Quelles conséquences civiles ou pénales y a-t-il lieu d'attacher au fait de la création d'un chèque sans aucune provision (dans le sens indiqué ci-haut sub 2°).

In the first case, should the check be payable only to a designated banker; in the second case, only to any banker?

6. If the law permits and regulates crossing, ought it to grant this power only to the drawer or also to an indorser or to the holder, whether the drawer has not crossed the cheque or has given it a general crossing, and the indorser or the holder desire to cross it specially?

7. Should the clause Nur zur Verrechnung (German law of Mar. 11, 1908, par. 14) be recognized and regulated by the law, and with what consequences?

8. Should the law prescribe:

(a) That the place indicated as the domicile of the drawee shall be considered as the place of payment if the check indicates no other place.

(b) That if the sum to be paid is indicated at the same time in words and in figures, and the two indications are not identical, the sum expressed in words should be considered as correct, and that if the sum to be paid has been indicated several times in words or in figures, it is the smaller sum which in case of difference should be considered to be correct?

9. (a) Should the check be payable only at sight?

And, in this case,

(b) Should the check containing a different indication of the date of payment nevertheless be considered as payable at sight, or should it be considered as void?

(c) Should the law permit that a check be payable a certain time after sight, fixing a maximum period (system of the Italian code of commerce)?

10. Should the law, in that which concerns

The form of indorsement,

The stipulation which prohibits indorsement,

The rights which are acquired by indorsement, and

The identification of the holder,

Refer to the corresponding provisions of the uniform law relative to the bill of exchange and the promissory note?

11. (a) What civil or penal consequences is there occasion to attach to the issue of a cheque for which no cover has been provided (in the sense indicated below, subdivision 2°).

(b) L'insuffisance de la provision doit-elle avoir les mêmes conséquences que l'absence complète de provision?

12. Le chèque pourra-t-il être émis en plusieurs exemplaires ou bien cette faculté ne doit-elle être donnée qu'à l'égard des chèques qui sont payables dans

Un autre état ou

Un autre lieu

que celui de l'émission, et ne sont pas payables au porteur?

13. Si la loi accorde la faculté d'émettre un chèque en plusieurs exemplaires, quelles sont les dispositions qu'elle doit contenir par rapport à la forme des exemplaires et aux conséquences du fait que les différents exemplaires du chèque ont été endossés à des personnes différentes?

14. Le chèque pourra-t-il être accepté?

Ou bien certifié? (certified, conformément à ce qui est admis dans les Etats-Unis d'Amérique)

Quels seraient les effets d'une acceptation ou d'une certification écrite sur un chèque?

15. La loi doit-elle reconnaître l'aval d'un chèque?

16. (a) La loi doit-elle fixer le délai dans lequel un chèque doit être présenté au tiré pour en obtenir le paiement?

Dans le cas d'une réponse affirmative,

(b) La loi doit-elle

1°. Distinguer entre les chèques payables sur la place où ils ont été tirés et ceux qui sont payables sur une autre place?

Ou bien

2°. Distinguer entre les chèques payables dans l'état où ils ont été tirés et ceux qui sont payables dans un autre état?

Ou bien

3°. Laisser chaque état libre de fixer les délais pour les chèques payables à un autre endroit que celui où ils ont été tirés, afin de permettre p. e. l'assimilation des chèques payables dans une autre partie de l'état où ils ont été tirés, aux chèques payables dans un autre état?

17. Si la loi fixe le délai pour la présentation d'un chèque,

(a) Les jours fériés doivent-ils être déduits, pour décider si le délai légal a été observé?

(b) Le dernier jour du délai étant un jour férié, la présentation doit-elle être faite le jour suivant?

18. La loi doit-elle assimiler à la présentation du chèque au tiré, la remise du

(b) Should the insufficiency of the balance to meet the check have the same consequences as complete absence of cover?

12. Should the check be issued in sets of several drafts or should this power be given only with regard to checks which are payable in

Another country or

Another place

than that of issue, and which are not payable to bearer?

13. If the law grants the power to issue a check in sets of several drafts, what are the provisions which it should contain with reference to the form of the drafts and to the consequences of the fact that the different drafts of the check have been indorsed to different parties?

14. Should the check be capable of being accepted?

Or certified (according to the practice permitted in the United States of America)?

What should be the effects of an acceptance or a certification written on a check?

15. Should the law recognize the guarantee (aval) of a check?

16. (a) Should the law fix the time within which a check must be presented to the drawee to obtain payment?

In the case of an affirmative response,

(b) Should the law

First. Distinguish between checks payable at the place where they have been drawn and those which are payable at another place?

Or

Second. Distinguish between checks payable in the country where they have been drawn and those which are payable in another country?

Or

Third. Leave each country free to fix the time for checks payable in another place than that where they have been drawn, in order to permit, for example, the assimilation of checks payable in another part of the country in which they have been drawn to checks payable in another country?

17. If the law fixes the time for the presentment of a check,

(a) Shall holidays be deducted, in order to decide if the legal term has been observed?

(b) If the last day of the term is a holiday, should presentment be made on the day following?

18. Should the law assimilate delivery of a check to a clearing house, in which

chèque à une chambre de compensation (clearing house) dans laquelle le tiré est représenté?

19. La loi doit-elle, quant à la manière de constater la présentation et le nonpaiement du chèque, renvoyer aux dispositions de la loi uniforme relative à la lettre de change et au billet à ordre—en y ajoutant que dans le cas de la remise à une chambre de compensation le protêt ne sera pas requis dans les Etats où cette remise pourra légalement remplacer la présentation au tiré?

20. La loi doit-elle conférer au porteur d'un chèque le droit d'agir en justice contre le tiré?

21. Les règles relatives au recours du porteur contre le tireur et les endosseurs en cas de non-paiement d'un chèque doivent-elles être les mêmes qu'à l'égard de la lettre de change?

22. Le porteur d'un chèque qui n'en réclame pas le paiement dans les délais prescrits par la loi, perdra-t-il son recours—

(a) Contre les endosseurs?

(b) Contre le tireur—soit dans tous les cas, soit seulement dans le cas que le tireur a fait provision et que la provision a péri par le fait du tiré après l'expiration des dits délais? (Art. 5, al. 2 de la loi française du 14 juin 1865.)

Dans le cas d'une réponse affirmative à la question b (sans qu'il soit distingué entre les deux hypothèses) doit-on accorder au porteur contre le tireur une action analogue à celle que lui accorde la loi allemande du 11 mars 1908, section 21?

23. La loi doit-elle, quant à la notification du non-paiement aux endosseurs et au tireur, renvoyer aux dispositions de la loi uniforme relative à la lettre de change et au billet à ordre?

24. Un tel renvoi doit-il également avoir lieu par rapport à la prescription des actions contre le tireur et les endosseurs d'un chèque?

25. Le tireur doit-il avoir le droit de révoquer le mandat donné au tiré par le chèque?

Et, dans le cas d'une réponse affirmative, une telle révocation doit-elle rester sans effet jusqu'après l'expiration du délai fixé pour la présentation du chèque?

26. La loi doit-elle régler l'effet de la mort ou de la faillite du tireur d'un chèque sur la position du tiré?

27. Quant à la perte d'un chèque, suffit-il que la loi renvoie aux dispositions concernant cette matière dans la loi uniforme relative à la lettre de change et au billet à ordre?

the drawee is represented, to presentment of the check to the drawee?

19. Should the law refer to the provisions of the uniform law relative to the bill of exchange and the promissory note in regard to the manner of establishing the presentment and the nonpayment of the check, adding thereto that in the case of delivery to a clearing house, the protest shall not be required in the countries in which such delivery may legally take the place of presentment to the drawee?

20. Should the law confer on the holder of a check the right to proceed at law against the drawee?

21. Should the rules relative to recourse of the holder against the drawer and the indorsers in case of the nonpayment of a check be the same as with regard to the bill of exchange?

22. Should the holder of a check who does not demand payment within the term prescribed by law, lose his recourse—

(a) Against the indorsers?

(b) Against the drawer—either in all cases, or only in the case that the drawer has provided cover and that the cover has been lost by the act of the drawee after the expiration of the said term (art. 5, par. 2, of the French law of June 14, 1865)?

In the case of an affirmative response to question b (without distinguishing between the two hypotheses), should the right be granted to the holder to institute suit against the drawee similar to that which is accorded to him by the German law of March 11, 1908, section 21?

23. Should the law refer to the provisions of the uniform law relative to the bill of exchange and the promissory note, in regard to notice of nonpayment to the indorsers and to the drawer?

24. Should such a reference take place equally with regard to the time limitation of suits against the drawer and the indorsers of a check?

25. Should the drawer have the right to revoke the order given to the drawee by the check?

And, in case of an affirmative response, should such a revocation remain without consequences until after the expiration of the term fixed for the presentment of the check?

26. Should the law regulate the effect of the death or the bankruptcy of the drawer of a check upon the position of the drawee?

27. In case of the loss of a check, will it suffice that the law refer to the provisions on this subject in the uniform law relative to the bill of exchange and the promissory note?

28. Les conséquences d'un faux (signature fautive du tireur ou d'un endosseur ou falsification du contenu du chèque) doivent-elles être réglées d'après le système adopté pour la lettre de change et le billet à ordre?

29. La loi doit-elle décider qui doit supporter le dommage résultant du paiement d'un chèque portant des signatures fausses ou dont le contenu est falsifié (le tireur ou le tiré) ou qui a été mis en circulation sans le consentement du signataire de ce chèque?

30. Quelles sont les règles de droit international privé applicables:

(a) À la capacité des signataires d'un chèque.

(b) Aux conditions essentielles requises pour la validité d'un chèque comme tel.

(c) À la forme des obligations contractées par les signataires d'un chèque.

(d) Aux formalités à remplir pour conserver les droits résultant d'un chèque.

(e) À la sanction des dispositions fiscales?

28. Should the consequences of a fraud (forged signature of the drawer or of an indorser or falsification of the contents of a check) be regulated according to the system adopted for the bill of exchange and the promissory note?

29. Should the law decide who (the drawer or the drawee) should bear the loss resulting from the payment of a check bearing forged signatures or of which the contents has been altered or which has been put in circulation without the consent of the signer of such check?

30. What are the rules of international private law applicable:

(a) To the capacity of the signers of a check.

(b) To the essential conditions required to establish the validity of a check as such.

(c) To the form of the obligations contracted by the signers of a check.

(d) To the formalities to be fulfilled to safeguard the rights arising from a check.

(e) To the penalties imposed by fiscal provisions?























